United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

B
P1S

75-1057

IN THE

United States Court of Appeals

For the Second Circuit

No. 75-1057

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

against

IRA FEINBERG,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

Vol. I Pages 1A-324A

RUBIN, SEIDMAN & DOCHTER
Attorneys for Appellant
425 Park Avenue
New York, New York 10022
(212) 486-3330

UNITED STATES COURT OF APPEALS
FILED
APR 8 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

3

PAGINATION AS IN ORIGINAL COPY

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JUDGE LASKER → 1/18/74

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

JUDGE [redacted]

73 CRIM. 464 A

D. C. Form No. 100 Rev.

TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U.S.: 264-6426
vs.		Howard Wilson, AUSA
1) IVAN A. EZRINE	all counts	1-31-75
2) IRA FEINBERG	all counts	4430
3) JOSEPH DELMANICO	cts. 1 thru 28	
4) JACK NAIMAN	cts. 1 thru 28	For Defendant:
5) CHRIS NETELKOS	cts. 1 thru 28	
6) BENJAMIN WERNER	cts. 1 thru 28	
7) MANOR NURSING CENTERS, INC.	all counts	

(04) STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk					
J.S. 3 mailed	Marshal					
Violation comp.#72-1955	Docket fee					
Title :see below:						
Sec.						

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
BY [signature] Deputy Clerk

UNITED STATES COURT OF APPEALS
FILED
FEB 19 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

DATE	PROCEEDINGS
	15:78j(b) & 78ff - Securities Fraud (cts. 2 thru 14) 18:1341 & 2 - Mail Fraud (cts.15 thru 28) 18:1001 & 2 - Make false statement (ct. 29) 15:780 & 78ff - File false statement with SEC (ct. 30) 18:371 - conspiracy so to do (ct.1) -----THIRTY-COUNTS-----
5-17-73	Filed Indictment - B/W ordered. -- Ryan, J.
5-29-73	Benjamin Werner- Filed notice of appearance by Kaufmann & Kligfeld, Esqs., 111 B'way, NYC 10006 (Phone: 248-3120)
5-29-73	Chris Netelkos- Filed notice of ~~motion~~ appearance by Bernard Jay Coven 747 Third Ave., NYC 10017
5-29-73	Joseph Del Monico- Filed notice of appearance by Paul P. Rao, Jr., Esq. 233 B'way, NYC (Phone: WO 4-8866)

DATE	PROCEEDINGS
	B
5-29-73	EZRINE- Filed notice of appearance by Weiss Rosenthal Heller & Schwartzman, Esqs., by Howard L. Mann, 295 Madison Ave., NYC 10017 (Phone 725-9200)
5-29-73	FEINBERG- Filed notice of appearance by Irving P. Seidman, Esq., 292 Madison Ave., NYC 10017 (Phone 686-0644)
5-29-73	EZRINE- Deft. (Atty. present) pleads not guilty. Bail fixed at $10,000. P.R.B. Deft. ordered photographed and fingerprinted. 10 days for motions FEINBERG- Deft. (Atty. present) pleads not guilty. Bail fixed in the sum of $10,000. P.R.B. Deft. ordered photographed and fingerprinted. 10 days for motions DELMANICO- Deft. (Atty. present) pleads not guilty. Bail fixed in the sum of $5,000. P.R.B. Deft. ordered photographed and fingerprinted. 10 days for motions. NAIMAN- Deft. (Atty. present) produced on writ - pleads not guilty. $10,000. P.R.B. writ adjourned - 10 days for motions. NETELKOS- Deft. (Atty. present) pleads not guilty. Bail fixed in the sum of $10,000. P.R.B. - Deft. photographed and fingerprinted. 10 days for motions WERNER- Deft. (Atty. present) pleads not guilty. Bail $10,000. P.R.B. Deft. photographed and fingerprinted. 10 days for motions. MANOR NURSING HOME- with Attorney - Not guilty plea entered. case assigned to Judge Bauman. Cannella, J.
6-5-73	Naiman-Application to reduce bail of $10,000. cash or surety bond to $10,000. P.R.B. No bojection by the Govt. Application granted. Bauman,J.
6-29-73	Ezrine(Filed (4) P.R.B. in the some of $10,000. and dtd.5-29-73. Netelkos(Feinberg(Werner(
6-29-73	Delmanico-Filed P.R.B. in the sum of $5,000. dtd.5-29-73.
7-12-73	Jack Naiman- Marked off. Palmieri,J.
7-13-73	Pre-trial conference held. Motions Ret. July 17,1973. Trial set for Oct. Term. Bauman,J.
7-11-73	ERZINE- Filed affdvt. and notice of motion to suppress.
7-11-73	ERZINE- Filed Memorandum of law in support of motion to suppress.
7/13-73	JACK NAIMAN - Filed W/H/C ,Writ Satisified. COOPER,J. Jul.12,73.
7/20/73	IRA FEINBERG & MANOR NURSING CENTERS,Inc. Filed notice of motion for evidentiary hearing. Ret July 25,73. [redacted] J.
10-2-73	Filed B/P as to defts. Ira Feinberg and Manor Nursing Center.
10-3-73	IVAN A. EZRINE - Filed Order to Show cause granting defts. to withdraw as counsel. Returnable Oct.9-73. BAUMAN,J.
10-3-73	Filed B/P.

Cont'd on page 3

DATE	PROCEEDINGS
-10-73	CHRIS METELKOS- (Atty Present) Deft. withdraws plea of not guilty and PLEADS GUILTY to ct.1 only,P.S.I. Ordered. Bail cont'd pending sentance, cts. 2 thru 28 remains open to date of sentence. Sentence adjd Sine Die.BAUMAN,J.
0-12-73	JACK NAIMAN & BENJAMIN WERNER - Defts(Attys.Present) Withdraws plea of not guilty and PLEADS GUILTY to count 1 only.P.S.I. Ordered Bail cont'd. Sentences adj'd Sine Die. Cts. 2 thru 28 remain open to date of sentence. BAUMAN,J.
11-27-73	Deft. JOSEPH DELMONICO. (Atty Present) PRE-TRIAL conferance held & trial set down for Jan.21,1974 at 10:00 a.m. BAUMAN,J.
1-30-73	Filed transcript of record of proceedings dated 10-18-73.
-8-74	IRA FEINBERG- Atty. application for adjdurment denied. BAUMAN,J.
-1-74	IRA FEINBERG - Filed order that A. Stanley Cooper is appointed to make examination of deft. and report.Ordered that U.S. Atty. pay said Drs. fee not to exceed $100. dollars. BAUMAN,J. (3 certified copies to U.S. Marshals)
5-9-74	Filed transcript of record of proceedings, dated 2-27-74
JUL 12-74	Filed transcript of record of proceedings, dated OCT. 12-73
JUL 12-74	Filed transcript of record of proceedings, dated OCT 10-73
12-16-74	Filed transcript of record of proceedings, dated 7-30-73
7-18-74	Case reassigned to Judge Lasker.
8-29-74	Filed transcript of record of proceedings, dated 2-27-74
9-3-74	IVAN A. EZRINE- Filed Defts Notice of Motion to supress evidence.
9-3-74	IVAN A. EZRINE- Filed Defts Memorandum on Motion to Supress.
9-3-74	IVAN A. EZRINE- Filed Deft's Notice of Motion to Bar evidence of prior conviction.
9-3-74	IVAN A. EZRINE- Filed Deft's Memorandum on Motion to Preclude Evidence of prior Conviction.
9-12-74	IVAN A. EZRINE-Govt's affdvt. in opposition to deft's motion to prevent the Govt. from talking to his wife as part of its investigation.
9-12-74	IVAN A. EZRINE-Govt's Memo. in opposition to deft. Ezrine's motion to suppress.
9-13-74	Filed Pltff's Memorandum in opposition to Deft. EZRINE'S motion to Bar the use of Deft. EZRINE"S prior Conviction.
9-20-74	IVAN A. EZRINE- Filed MEMO ENDORSEMENT on Defts motion to Bar Evidence of Prior Conviction & supporting Papers, filed 9-3-74. Motion DENIED without prejudice to renewal at Trial. IT IS SO ORDERED- LASKER,J. (N/M)
9-20-74	IVAN A. EZRINE- Filed MEMO ENDORSEMENT on Defts Motion to Suppress & Supporting Papers filed 9-3-74. Motion DENIED in accordance with anncounement in open court Sept. 19, 1974. IT IS SO ORDERED - LASKER, J. (N/M)

Cont'd on Page #4

DATE	PROCEEDINGS
0-21-74	IVAN A. EZRINE= Filed Pltff's Supplemental Bill of Particulars.
0-21-74	IRA FEINBERG & MANOR NURSING CENTERS, INC= Filed Pltff's Supplemental Bill of Particulars.
0-30-74	IVAN A. EZRINE= Deft, AUSA Howard Wilson & Defts Atty Burton Brody present, withdrew his plea of NOT GUILTY and enters plea of GUILTY to Counts 1,7, 21, & 29. Pre-sentence report ordered. Deft. cont'd on present bail. Sentence is sine die. --LASKER, J.
0-30-74	IRA FEINBERG= Filed Order that Deft is to be examined by Sanford Lewis, M.D. and that the Deft is to submit to such a physical examination -LASKER,J.
1-12-74	COUNTS 29 & 30 are DISMISSED as to FEINBERG (entered on Docket Sheet 1-29-75)
1-12-74	Jury Trial begun as to Deft's FEINBERG and DEIMANICO.
1-13-74	Trial cont'd.
1-14-74	Trial cont'd.
1-18-74	Trial cont'd.
1-19-74	Trial cont'd.
1-20-74	Trial cont'd.
1-21-74	Trial cont'd.
1-22-74	Trial cont'd.
1-25-74	Trial cont'd. Gov't Rests.
1-26-74	Trial cont'd.
2-2-74	Trial cont'd.
2-3-74	Trial cont'd.
2-4-74	Trial cont'd.
2-5-74	Trial cont'd.
2-6-74	Trial cont'd.
2-9-74	Trial cont'd and concluded. PARTIAL JURY VERDICT - JOSEPH DEIMANICO= NOT GUILTY on Counts 1 and 2 through 28. IRA FEINBERG = NOT GUILTY on Counts 2,3,4,5,6,7,8,15,16,17,18,19,20. GUILTY on Counts 1,9,10,11,12,13,14, ,21,22,23,24,25,26,27, & 28. Bail limits cont'd and extended to FLORIDA. Pre-Sentence report ordered. Sentence date 1-24-75 ---LASKER, J.
2-10-74	~~Filed transcript of record of proceedings, dated~~ 10-20-74
2-2-74	Filed transcript of record of proceedings, dated NOV - 12, 13, 14, 18, 19 1974
2-3-74	Filed transcript of record of proceedings, dated NOV - 20, 21, 22, 25, 26, 1974
2-20-74	Filed transcript of record of proceedings, dated Dec - 2, 3, 4, 6, 6, 7, 9, 1974
1-24-75	BENJAMIN WERNER= Filed Judgment and Probation/Commitment Order= The Court adjudged the Deft. guilty as charged and convicted and ordered that the imposition of the sentence of imprisonment is suspended and the Deft. is placed on Probation for a period of (18) EIGHTEEN MONTHS. COUNTS TWO through TWENTY-eight are DISMISSED on the motion by Deft's counsel.---LASKER,J.
1-25-75	IVAN A. EZRINE= Filed Judgment and Commitment Order - The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of Eighteen (18) MONTHS on each of COUNTS 1,7,21 and 29, the sentences to run concurrently and not consecutively COUNTS 2,3,4,5,6,8,9,10,11,12,13,14,15,16,17,18,19,20,22,23,24,25,26,27, 28 and 30 are dismissed on the motion of Deft's counsel. ---LASKER, J.

(Cont'd on Page # 5)

E

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
1-24-75	JACK NAIMAN= Filed Judgment and Probation/Commitment Order = The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of FOUR (4) years on COUNT 1, on condition that the Deft. be confined in a jail type or treatment type institution for a period of FOUR MONTHS, the execution of of the remainder of the sentence of imprisonment is suspended and the Deft is placed on Probation for a period of THREE YEARS and EIGHT MONTHS, subject to the standing probation order of the Court. COUNTS TWO through TWENTY EIGHT are DISMISSED on the motion of the Deft's Counsel---LASKER,J.
1-24-75	CHRIS METELKOS= Filed Judgment and Probation/Commitment Order = The Deft. is hereby committed to the custody of the Atty General for imprisonment for a period of TWO (2) YEARS and on the condition that the Deft. be confined in a Jail or treatment type institution for a period of THREE MONTHS, the execution of the remainder of the sentence of imprisonment is suspended and the Deft. placed on in Probation for a period of TWENTY-ONE MONTHS subject to the standing Probation order of this Court. COUNTS TWO throughTWENTY-EIGHT are DISMISSED on the motion of Deft.s Counsel.---LASKER,J.
1-24-75	IRA FEINBERG= Filed Judgment and Commitment Order - The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of (18)EIGHTEEN MONTHS on each of COUNTS 1,9,10,11,12,13,14,21,22,23,24,25,26,27, and 28, the sentence to run concurrently on each count and not consecutively.--LASKER,J.
1-27-75	Gov't moves to DISMISS all COUNTS against MANOR NURSING --GARNTED--LASKER,J.
1-31-75	IRA FEINBERG: Filed Deft notice of appeal from the judgment of conviction on Dec 9-1974. (m/n to defts atty & USA atty)
2-3-75	Filed transcript of record of proceedings dated 1-25-75.

INDICTMENT

HW:aas
72-1955

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
MAY 17 1973
S.D. OF N.Y.

UNITED STATES OF AMERICA,

- v -

IVAN A. EZRINE,
IRA FEINBERG,
JOSEPH DELMONICO,
JACK NAIMAN,
CHRIS NETELKOS,
BENJAMIN WERNER,
MANOR NURSING CENTERS, INC.,

Defendants.

INDICTMENT
73 Cr.

73 Crim. 464

MICROFILM
MAY 18 1973

The Grand Jury charges:

1. From on or about the 30th day of June, 1969, and continuously thereafter, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, IVAN A. EZRINE, IRA FEINBERG, JOSEPH DELMONICO, JACK NAIMAN, CHRIS NETELKOS, BENJAMIN WERNER, and MANOR NURSING CENTERS, INC., the defendants, and others to the Grand Jury unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other, to commit certain offenses against the United States, to wit, violations of Section 78j(b) of Title 15, United States Code; Rule 10b-5, (17 C.F.R. §240.10b-5) of the rules and regulations promulgated by the United States Securities and Exchange Commission under the Securities Exchange Act of 1934; and Sections 1001 and 1341 of Title 18, United States Code.

A TRUE COPY
RAYMOND F. BURGHARDT
BY
Deputy Clerk

The Defendants

2. The defendant MANOR NURSING CENTERS, INC. (hereinafter referred to as "MANOR"), at times material to the indictment, was a New Jersey corporation engaged in the

955

business of constructing and operating nursing centers which would provide extended care nursing, convalescent, and rehabilitation facilities for adult patients. As of June, 1969, MANOR owned and operated a single 64 bed nursing center in Tenafly, New Jersey.

3. The defendant IVAN A. EZRINE, an attorney with considerable experience in the securities business was, at all times material to this indictment, acting as counsel to MANOR.

4. The defendant IRA FEINBERG was, at all times material to this indictment, the controlling stockholder and president of MANOR.

5. The defendants JOSEPH DELMONICO and JACK NAIMAN were, at all times material to this indictment, officers and employees of the Denesco Corporation.

6. The defendant CHRIS NETELKOS was, at times material to this indictment, associated with Carlton-Cambrige, a brokerage firm located in New Jersey, and with Orvis Brothers, a New York City brokerage firm and a member of the New York Stock Exchange.

7. The defendant BENJAMIN WERNER was, at all times material to this indictment, the sole owner of Benjamin Werner Co., a New York City brokerage firm and the underwriter for the public offering of the stock of MANOR.

OBJECTS OF THE CONSPIRACY

8. It was a part of said conspiracy that the defendants, in connection with the purchase and sale of securities, to wit, the common stock of MANOR, would and did directly and indirectly use means and instrumentalities of interstate commerce and the mails to use and employ manipulative and deceptive devices and contrivances in contravention of Rule 10b-5, [17 C.F.R. Section 240.10b-5] of the rules and regulations of the United States Securities and Exchange Commission.

IW:ko
72-1955

9. It was further a part of said conspiracy that said defendants, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, unlawfully, wilfully and knowingly, and for the purpose of executing said scheme and artifice and attempting so to do, would and did place and cause to be placed in post offices and authorized depositories for mail matter, and would and did cause to be delivered by mail according to the direction thereon, certain matter to be sent and delivered by the Post Office Department.

10. It was further a part of said conspiracy that the defendants, in a matter within the jurisdiction of the United States Securities and Exchange Commission, unlawfully, wilfully and knowingly would and did make a false, fictitious and fraudulent statement and representation in a "sticker" to the prospectus of MANOR.

MEANS OF THE CONSPIRACY

12. Among the means by which the defendants would and did carry out the said conspiracy were the following:

(a) On or about June 30, 1969, the defendants IVAN A. EZRINE, IRA FEINBERG and BENJAMIN WERNER caused the filing with the Securities and Exchange Commission (hereinafter referred to as the "SEC") of a registration statement for the sale to the public, on an "all or nothing" basis, of 450,000 shares of the common stock of MANOR at $10. per share, which required that unless all of the 450,000 shares were sold any monies received from investors would be returned. Of the 450,000 shares, 100,000 were to be sold to the public by certain of MANOR'S then existing

shareholders, including IRA FEINBERG and corporations associated with IVAN EZRINE, who had paid no more than $.05 per share for their stock, and the remaining 350,000 shares were to be sold to the public by MANOR itself.

(b) In or about February, 1970, the defendants IVAN A. EZRINE, IRA FEINBERG, JOSEPH DELMONICO and JACK NAIMAN agreed that the Deneso Corporation would purchase 170,000 shares of MANOR stock for $1,700,000 on the condition that the Deneso Corporation would receive special compensation and protection against loss.

(c) In or about February, 1970, the defendants CHRIS NETELKOS, IRA FEINBERG and IVAN A EZRINE agreed that CHRIS NETELKOS would arrange for the purchase of $1,425,000 of MANOR stock on condition that IRA FEINBERG would make a personal loan to CHRIS NETELKOS of $250,000.

(d) On or about February 20, 1970, the defendants IVAN EZRINE, IRA FEINBERG, JOSEPH DELMONICO, and JACK NAIMAN caused the Deneso Corporation to present $1,700,000 in checks for the purchase of MANOR stock although there was less than $100 in the bank account of the Deneso Corporation.

(e) On or about February 20, 1970, the defendants IVAN A. EZRINE and IRA FEINBERG caused CHRIS NETELKOS to present $832,500 in checks for the purchase of MANOR stock although there were insufficient funds to cover these checks.

(f) On or about February 20, 1970, the defendants IVAN A. EZRINE and IRA FEINBERG caused MANOR to issue checks on its bank accounts totalling over $385,000 when there were insufficient funds to cover the checks, and caused these checks to be used for the purchase of MANOR stock for the accounts of others.

(g) On or about February 20, 1970, IVAN A. EZRINE and IRA FEINBERG caused the issuance of checks totalling $170,000 on the account of IRA FEINBERG when there were insufficient funds to cover these checks, and caused these checks to be used for the purchase of MANOR stock in the name of friends of IRA FEINBERG who had no knowledge of such purchases.

(h) On February 20, 1970, IVAN EZRINE and IRA FEINBERG caused the sale of 450,000 shares of MANOR stock to be declared successfully consummated, and caused the stock certificates in MANOR to be issued to purchasers in purported compliance with the terms of the registration statement, when in fact they well knew that those terms had not been complied with and that no more than $750,000 had been obtained in cash.

(i) After February 20, 1970, the defendants IVAN A. EZRINE, IRA FEINBERG and BENJAMIN WARNER caused and permitted the stock of MANOR to trade in the over-the-counter market without advising the SEC and the public that the offering of stock to the public had not been successfully consummated.

(j) On or about February 27, 1970, the defendants IVAN A. EZRINE and IRA FEINBERG caused the filing with the SEC of a false and misleading "sticker" which asserted that all of the proceeds had been received from the sale of 450,000 shares of MANOR stock.

(k) On or about March 4, 1970, the defendants IVAN A. EZRINE and IRA FEINBERG caused the sale of 60,000 shares of MANOR stock to David Haber by agreeing to provide him with special compensation and protection against losses.

(l) On or about March 5, 1970, the defendants IVAN A. EZRINE, IRA FEINBERG and BENJAMIN WERNER caused the preparation of a letter which falsely stated that the monies required under the terms of the public offering had been paid to MANOR by BENJAMIN WERNER.

(m) From on or about February 20, 1970 to March 26, 1970, although no more than $750,000 in cash had been obtained through the public offering from purchasers of MANOR stock, the defendants IVAN A. EZRINE and IRA FEINBERG caused over $650,000 to be paid to the shareholders of MANOR who had sold their stock as part of the public offering, including over $559,000 to IRA FEINBERG.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the defendants did commit the following overt acts, among others, in the Southern District of New York:

1. On or about February 20, 1970, BENJAMIN WERNER wrote checks.

2. On or about February 20, 1970, IVAN A. EZRINE and BENJAMIN WERNER went to the Chemical Bank.

3. On or about February 20, 1970, CHRIS NETELKOS went to Orvis Brothers.

4. On or about February 20, 1970, JACK NAIMAN had a telephone conversation with IVAN A. EZRINE.

5. In or about the end of February, 1970, BENJAMIN WERNER had a telephone conversation with IRA FEINBERG.

6. In or about the end of February, 1970, BENJAMIN WERNER had a telephone conversation with IVAN A. EZRINE.

7. In or about the end of February, 1970, IVAN A. EZRINE prepared a "sticker".

8. On or about March 4, 1970, IVAN A. EZRINE, IRA FEINBERG and BENJAMIN WERNER met David Haber.

9. On or about March 5, 1970, BENJAMIN WERNER signed a letter.

Each of the mailings hereinafter set forth in Counts Two through Twenty-Eight are alleged herein as overt acts.

(Title 18, United States Code, Section 371)

HW:emw
72-1955

COUNTS TWO THROUGH FOURTEEN

The Grand Jury further charges:

1. From on or about the 30th day of June, 1969, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, IVAN A. EZRINE, IRA FEINBERG, JOSEPH DELMONICO, JACK NAIMAN, CHRIS NETELKOS, BENJAMIN WERNER and MANOR NURSING CENTERS, INC. (hereinafter referred to as "MANOR"), the defendants, and others to the Grand Jury unknown, unlawfully, wilfully and knowingly did, directly and indirectly, by use of means and instrumentalities of interstate commerce and the mails, in connection with the purchase and sale of securities, to wit, the common stock of MANOR, (a) employ devices, schemes and artifices to defraud; (b) make untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engage in transactions, practices and courses of business which would operate as a fraud and deceit upon the purchasers and sellers of the aforementioned securities.

2. The allegations contained in paragraph 12 of Count One of this indictment are repeated and realleged as though fully set forth herein, as constituting and describing the means by which the defendants committed the offense charged in paragraph 1 of these counts.

3. On or about the dates hereinafter set forth in Counts Two through Fourteen in the Southern District of New York, said defendants unlawfully, wilfully and knowingly did use and

cause to be used means and instrumentalities of inter te commerce and the mails pursuant to and in furtherance the scheme alleged in paragraph 1 of these counts, by sen g and causing to be sent to the persons and addresses herei ter set forth the matter hereinafter set forth:

COUNT	DATE	ADDRESSOR	ADDRESSEE	MATTER
2	1/26/70	Benjamin Werner Co. 19 Rector St. New York, N. Y.	Annette Adelman 81-14 251 Street Bellrose, N. Y.	Confirmation for the purchase of 200 shares of Manor stock
3	1/26/70	Benjamin Werner Co. 19 Rector St. New York, N.Y.	Therese Fernandez 227 Third Street Palisades Park, N.J.	Confirmation for the purchase of 250 shares of Manor stock.
4	2/2/70	Benjamin Werner Co. 19 Rector St. New York, N.Y.	Robert J. Satterwhite 302 Schraalesburgh Haworth, N.J.	Confirmation for the purchase of 100 shares of Manor stock.
5	2/13/70	Benjamin Werner Co. 19 Rector St. New York, N.Y.	Cosmo Coscia 20 Sycamore Road Dumont, N.J.	Confirmation of the purchase of 100 shares of Manor stock
6	2/13/70	Benjamin Werner Co. 19 Rector St. New York, N.Y.	Philip Kraft 676 Cheryl Drive Warminster, Pa.	Confirmation for the purchase of 50 shares of Manor stock.
7	2/13/70	Benjamin Werner Co. 19 Rector St. New York, N.Y.	Milton Strauss 166 Columbia Avenue Bergenfield, N.J.	Confirmation for the purchase of 100 shares of Manor stock
8	2/13/70	Benjamin Werner Co. 19 Rector St. New York, N.Y.	James J. Moretti 294 South Washington Avenue Bergenfield, N.J.	Confirmation for the purchase of 100 shares of Manor stock
9	2/27/70	Orvis Brothers 30 Broad St. New York, N.Y.	Anthony Valicenti 205-15 34 Ave. Bayside, N.Y.	Confirmation for the purchase of 100 shares of Manor stock
10	2/27/70	Orvis Brothers 30 Broad St. New York, N.Y.	Hyman Rosen 83-05 98 St. Woodhaven, N.Y.	Confirmation for the purchase of 100 shares of Manor stock
11	3/2/70	Orvis Brothers 30 Broad St. New York, N.Y.	Mary Brigaitis 5443 64 St. Maspeth, N.Y.	Confirmation for the purchase of 100 shares of Manor stock
12	3/17/70	Benjamin Werner Co. 19 Rector St. New York, N.Y.	D. Thomas Kraft 120 Tilliston Circle Pittsburgh, Pa.	Delivery of 50 shares of Manor stock

COUNT	DATE	ADDRESSOR	ADDRESSEE	MATTER
13	3/17/70	Benjamin Werner Co. 19 Rector St. New York, N.Y.	Herman Reich 45-18 Springfield Blvd. Bayside, N.Y.	Delivery of 200 shares of Manor stock
14	3/20/70	Orvis Brothers 30 Broad St. New York, N.Y.	Thomas Carey 142 E. 71 St. New York, N.Y.	Confirmation for the purchase of 100 shares of Manor stock

(Title 15, United States Code, Sections 78j(b) and 78ff, Rule 10b-5 [17 C.F.R. §240.10b-5] and Title 18, United States Code, Section 2.)

COUNTS FIFTEEN THROUGH TWENTY-EIGHT

The Grand Jury further charges:

From on or about the 30th day of June, 1969 up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, the defendants IVAN A. EZRINE, IRA FEINBERG, JOSEPH DELMONICO, JACK NAIMAN, CHRIS NETELKOS, BENJAMIN WERNER and MANOR NURSING CENTERS, INC. (hereinafter referred to as "MANOR"), and others to the Grand Jury unknown, unlawfully, wilfully and knowingly did devise and intend to devise a scheme to defraud purchasers of common stock of MANOR and to obtain money and property from said persons by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing said scheme and artifice to defraud and attempting to do so, did place and cause to be placed in post offices and authorized depositories for mail matter and did cause to be delivered by mail according to the directions thereon certain matter to be sent and delivered by the Post Office Department.

2. The allegations contained in Paragraph 12 of Count One of this indictment are repeated and realleged as though fully set forth herein as constituting and describing the means by which the defendants committed the offense charged in paragraph 1 of these counts.

3. On or about the dates hereinafter set forth in Counts Fifteen through Twenty-eight, in the Southern District of New York said defendants, unlawfully, wilfully and knowingly did cause to be placed in post offices and authorized depositories for mail matter and cause to be delivered by mail by the Post Office Department according to the direction thereon, to the persons and addresses hereinafter set forth, the matter hereinafter set forth:

COUNT	DATE	ADDRESSOR	ADDRESSEE	MATTER
15	1/26/70	Benjamin Werner Co. 19 Rector St. New York, N.Y.	S. Peter DiFeo 379 Albany St. Saddle Brook, N.J.	Confirmation for the purchase of 100 shares of Manor stock
16	1/26/70	Benjamin Werner Co. 19 Rector St. New York, N.Y.	Edith Kaminsky 2520 Batcheider St. Brooklyn, N.Y.	Confirmation for the purchase of 500 shares of Manor stock
17	1/26/70	Benjamin Werner Co. 19 Rector St. New York, N.Y.	Al Courtney 1531 Tawnee Drive Las Vegas, Nevada	Confirmation for the purchase of 200 shares of Manor stock
18	2/13/70	Benjamin Werner Co. 19 Rector St. New York, N.Y.	James F. Devine 349 Lafayette Ave. Westwood, N.J.	Confirmation for the purchase of 100 shares of Manor stock
19	2/13/70	Benjamin Werner Co. 19 Rector St. New York, N.Y.	Claire J. Stemmler 231 Patterson Ave. East Rutherford, N.J.	Confirmation for the purchase of 50 shares of Manor stock
20	2/13/70	Benjamin Werner Co. 19 Rector St. New York, N.Y.	Sidney Kurlantzick 80 N. Washington Ave. Bergenfield, N.J.	Confirmation of the purchase of 100 shares of Manor stock

COUNT	DATE	ADDRESSOR	ADDRESSEE	MATTER
21	2/27/70	Orvis Brothers 30 Broad St. New York, N.Y.	John F.X. O'Connor 90-11 35 Ave. Jackson Heights, N.Y.	Confirmation for the purchase of 200 shares of Manor stock
22	2/27/70	Orvis Brothers 30 Broad St. New York, N.Y.	Vincent C. Fulco 45-04 104 St. Corona, N.Y.	Confirmation for the purchase of 100 shares of Manor stock
23	2/27/70	Orvis Brothers 30 Broad St. New York, N.Y.	Nicholas Leone 21-10 28 Ave. Astoria, N.Y.	Confirmation for the purchase of 200 shares of Manor stock
24	3/2/70	Orvis Brothers 30 Broad St. New York, N.Y.	Mary Brigaitis 5443 64 St. Maspeth, N.Y.	Confirmation for the purchase of 100 shares of Manor stock
25	3/17/70	Benjamin Werner Co. 19 Rector St. New York, N.Y.	Ann O'Rourke 47 Day Ave. Tenafly, N.J.	Delivery of 5 shares of Manor stock
26	3/17/70	Benjamin Werner Co. 19 Rector St. New York, N.Y.	Albert Hess 591 Burwick Ave. Teaneck, N.J.	Delivery of 300 shares of Manor stock
27	3/17/70	Benjamin Werner Co. 19 Rector St. New York, N.Y.	Angelo Guimmule 187 Denver Road Paramus, N.J.	Delivery of 100 shares of Manor stock
28	3/20/70	Orvis Brothers 30 Broad St. New York, N.Y.	Thomas Carey 142 E. 71 St. New York, N.Y.	Confirmation for the purchase of 100 shares of Manor stock

(Title 18, United States Code, Sections 1341 and 2.)

COUNT TWENTY-NINE

The Grand Jury further charges:

On or about the 27th day of February, 1970, in the Southern District of New York, IVAN A. EZRINE, IRA FEINBERG and MANOR NURSING CENTERS, INC., the defendants, in a matter within the jurisdiction of the department and agency of the United States, to wit, the United States Securities and Exchange Commission, unlawfully, wilfully and knowingly did make and cause to be made a false, fictitious and fraudulent statement and representation

NOTICE OF MOTION AND AFFIDAVIT
TO DISMISS INDICTMENT OR IN THE
ALTERNATIVE TO SUPPRESS THE EVIDENCE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA :

v. :

73 Cr. 464

IVAN A. EZRINE, :
IRA FEINBERG,
JOSEPH DELMONICO, :
JACK NAIMAN, NOTICE OF MOTIONS
CHRIS NETELKOS, :
BENJAMIN WERNER,
MANOR NURSING CENTERS, INC., :

Defendants. :

- - - - - - - - - - - - - - - - - - x

S I R S :

PLEASE TAKE NOTICE, that the defendants Ira Feinberg and Manor Nursing Centers, Inc., by affidavit of their attorney, IRVING P. SEIDMAN, sworn to the 19th day of July 1973, the exhibits annexed hereto, and all of the other papers in this prosecution, will move this Court before the Honorable Arnold Bauman, United States District Judge for the Southern District of New York, United States Courthouse, Foley Square, New York, New York, on the 25th day of July 1973 at 9:30 in the forenoon of that date or as soon thereafter as counsel may be heard for an evidentiary hearing and orders, as follows:

1. Pursuant to Rule 12(b)(1), 12(b)(2), 12(b)(4) of the Federal Rules of Criminal Procedure, dismissing all counts of the indictment as

to the defendants Ira Feinberg and Manor Nursing Centers, Inc., on the basis that said indictment was procured by the United States Attorney for the Southern District of New York and the Securities and Exchange Commission, New York Regional office, in violation of the defendant's rights guaranteed under the Fourth, Fifth, and Sixth Amendments of the Constitution of the United States or in the alternative suppressing all of the testimony and information heretofore given by the defendants Ira Feinberg and Manor Nursing Centers, Inc., in the administrative proceedings and in the civil proceeding entitled Securities and Exchange Commission v. Manor Nursing Centers, Inc. et al.(71 Civ. 367), prior to and subsequent to the indictment herein and all leads and fruits derived from said testimony and information furnished under legal compulsion.

2. Pursuant to Rule 14 of the Federal Rules of Criminal Procedure severing the trial of the defendants Ira Feinberg and Manor Nursing Centers, Inc. from that of the other co-defendants, on the basis that the joinder is violative of the constitutional rights of the defendants under the principals of law annunciated in Bruton v. United States, 391 U.S. 123, 20 L.Ed.2d 476 (1968).

3. Pursuant to Rule 16 of the Federal Rules of Criminal Procedure for discovery and inspection as set forth in Exhibit " " annexed to the supporting affidavit.

4. Pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure for a Bill of Particulars as specifically requested in Exhibit " " annexed herein.

Dated: New York, New York
July 17th, 1973

YOURS, ETC.,

IRVING P. SEIDMAN, ESQ.
Attorney for Defendants, Ira Feinberg and Manor Nursing Centers, Inc.
292 Madison Avenue
New York, New York 10017
(212) 686-0644

TO:

HONORABLE HOWARD WILSON
Assistant United States Attorney
United States Attorney's Office
Southern District of New York
United States Courthouse
Foley Square
New York, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA :

v. :

73 Cr. 464

IVAN A. EZRINE, :
IRA FEINBERG,
JOSEPH DELMONICO, :
JACK NAIMAN,
CHRIS NETELKOS, :
BENJAMIN WERNER, AFFIDAVIT
MANOR NURSING CENTERS, INC., :

Defendants. :

- - - - - - - - - - - - - - - - - - - x

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

IRVING P. SEIDMAN, being duly sworn, deposes and says:

1. I am an attorney admitted to practice in the State of New York and a member of the bar of the Southern District of New York. I represent the defendants Ira Feinberg and Manor Nursing Centers, Inc. I submit this affidavit in support of the following motions filed herewith seeking an evidentiary hearing and orders, as follows:

(i) to dismiss the indictment or in the alternative to suppress the testimony of the defendant Ira Feinberg given in prior to or subsequent to proceedings conducted by the Securities and Exchange Commission;

(ii) for severance of the trial of the defendants Ira Feinberg and Manor Nursing Centers, Inc. from that of the other defendants, pursuant to the doctrine of Bruton v. United States, 391 U.S. 123, 20 L.Ed2nd 476 (1968);

(iii) for a Bill of Particulars; and

(iv) for discovery and inspection including the disclosure of exculperatory or wire tap evidence.

2. The indictment charges the defendants with conspiring to violate and violating Sections 78j(b), 78ff, and 78o of Title 15, United States Court (Securities and Exchange Act of 1934) and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5). The defendants are further charged with having violated the Mail Fraud Statute (18 U.S.C. §1341); having filed a false statement with the Securities and Exchange Commission (18 U.S.C. §1001); having violated the reporting requirements of Section 15 of the Securities and Exchange Act of 1934 (15 U.S.C. §780); having violated 18 U.S.C. §371; having violated Title 15 and Rule 15d-1; having violated 18 U.S.C. §2.

3. The charges arise out of public offering of sale of the securities of Manor Nursing Centers, Inc. in February 1970. The defendant Ira Feinberg, not an attorney, was President of Manor Nursing Centers, Inc. He had no prior relationships to the securities industries nor had he ever been a principal of any company whose stock was offered for sale to the public.

The defendant Ira Feinberg is charged with having participated in the various fraudulent schemes and devices which basically violate technical sections of the securities laws as alleged in the indictment.

4. The defendants Ira Feinberg and Manor Nursing Centers, Inc. has entered a plea of not guilty.

THE MOTION FOR AN EVIDENTIARY HEARING SEEKING AN ORDER TO DISMISS OR IN THE ALTERNATIVE TO SUPPRESS ANY AND ALL OF THE TESTIMONY AND INFORMATION GIVEN BY IRA FEINBERG UNDER LEGAL COMPULSION IN THE ADMINISTRATIVE AND CIVIL COURT ACTIONS CONDUCTED BY THE SECURITIES AND EXCHANGE COMMISSION

5. On August 16, 1971, the Securities and Exchange Commission commenced a civil action in the United States District Court for the Southern District of New York (71 Civ. 3627) against the defendants in the instant indictment and others not indicted. This civil action was predated by an extensive administrative investigation by the Securities and Exchange Commission. On information and belief, it is respectfully submitted that the investigation was commenced as a result of Ivan Ezrine, a defendant herein, having been the attorney for the issuing company. It is respectfully submitted, that the administrative investigation and civil action were based on the same facts and circumstances that are the basis and gravamen of the indictment. The Securities and Exchange Commission contended in the civil proceedings that the offering of the shares of Manor Nursing Centers,

Inc. had been fraudulently consummated and that the defendants herein and others had received the profits of said fraudulent offering.

The Securities and Exchange Commission's civil action demanded that the assets of all of the defendants be frozen and that the defendants be required to disgorge all of the proceeds of the alleged fraudulent offering including interest and profits on the proceeds. Further, the Securities and Exchange Commission requested that a Trustee be appointed to collect and administer the funds so disgorged. The Securities and Exchange Commission further sought injunctive relief under Rule 10b-5. The Securities and Exchange Commission obtained an ex parte temporary restraining order which froze the assets of the defendants and was granted the injunctive relief sought.

6. On August 19, 1971, at a hearing concerning the above mentioned civil action, the defendant Ira Feinberg was called as a Securities and Exchange Commission witness in the civil proceeding matter. At this point and time, the Securities and Exchange Commission had been successful in obtaining a grant of a temporary restraining order freezing all of Ira Feinberg's assets and placing his entire economic life in jeopardy. Mr. Feinberg believing at such time that he had relied upon competent counsel, to wit: Ivan Ezrine, a defendant herein, did testify frankly and openly as to the facts and circumstances surrounding the public offering.

The defendant had previously given testimony and documents during the administrative investigation. At no time during the course of the Securities and Exchange Commission's administrative proceedings or questioning did the staff of the Securities and Exchange Commission advise the defendant Ira Feinberg of his rights against self-incrimination or that a criminal prosecution was contemplated. Further, the defendant Ira Feinberg was called as a Securities and Exchange Commission witness in the civil proceeding in District Court. At no time, therein, did the Securities and Exchange Commission indicate any possibility of a criminal prosecution. Ultimately, after a formal trial of the civil action, a decision was rendered in favor of the Securities and Exchange Commission (34 F. Supp. 1913) and that decision was affirmed in part by the Second Circuit United States Court of Appeals (458 F.2nd 1082).

Subsequent to the civil trial court decision and the affirmance by the Second Circuit, the Securities and Exchange Commission continued to question the defendant Ira Feinberg in an attempt to determine the amount of monies that was to be disgorged by him and other facts and circumstances of the case. At no time was Ira Feinberg informed of his constitutional privilege against self-incrimination nor of any possibility of criminal prosecution, nor of his right to counsel. The Securities and Exchange Commission's civil proceedings covered a period from an investigative stage commencing some time in February of 1971 through and including the present date hereof.

It is respectfully submitted that an evidentiary hearing will establish the following: (a) that the Securities and Exchange Commission at the initial administrative investigative proceedings contemplated an undisclosed intent to utilize its fact finding in the administrative and civil proceedings as the foundation stone for an intended criminal prosecution; (b) that the Securities and Exchange Commission thereby committed an illegal search and seizure, an illegal violation of the defendant's privilege against self-incriminatio and thereby a denial of counsel to the defendant Ira Feinberg; (c) that the Securities and Exchange Commission communicated through the course of its civil proceeding with the United States Attorney's office indicating its intent to ultimately refer this matter to the United States Attorney for criminal prosecution; (d) that the Securities and Exchange Commission did deliver to the United States Attorney all of the records and testimony emanating from its civil investigation and action to the United States Attorney which records and testimony were utilized in obtaining the instant indictment; (e) that telephone calls were had internally and memorandum prepared which clearly indicate that the administrative and civil proceedings herein were being utilized as an illegal search and seizure, violation of the privilege of self-incrimination and right to counsel as respects the defendant Ira Feinberg; and (f) that the Securities and Exchange Commission represented to the court prior to the actual trial of the civil action that its investigators could have testified as to the facts

underlying its civil action but that it prefer to call the defendant Ira Feinberg as its own witness; and (g) that internal Securities and Exchange Commission memorandum indicate an intent for Criminal Reference Report.

It is respectfully argued that if the Securities and Exchange Commission did in fact have evidence sufficient to establish its civil case independent of Feinberg's testimony then in that event, its only purpose in calling him as a witness was the ultimate use of his testimony against him.

7. In view of the restraining orders freezing all of Mr. Feinberg's assets and the coercive aspect of possible contempt should he refuse to cooperate in the conduct of the Securities and Exchange Commission's proceeding herein, it is obvious that Mr. Feinberg's testimony was coercive in view of the serious financial and legal penalties which would flow from a civil decision adverse to him. It is respectfully submitted that an evidentiary hearing is required herein to determine and examine what actions were taken by the staff of the Securities and Exchange Commission which will clearly establish that the civil proceedings were used as a procedure and devise to conduct a discovery proceeding which is not available to the government in any criminal prosecution.

It may well be that the Securities and Exchange Commission determined that the interest of the investing public was initially paramount in order to freeze assets.

Once having chosen that route with a contemplated criminal prosecution also intended, it is respectfully submitted that a criminal prosecution herein predicated on the testimony of the defendant in the civil proceeding is violative of his constitutional rights as herein enumerated. The Securities and Exchange Commission could have utilized its own investigative testimony. It is important for the defendant to be able to examine the Criminal Reference Report.

The testimony given by the defendant was not voluntary but coerced. Therefore, there was no waiver of any of his constitutional rights or privileges. The civil action herein was punitive leaving the defendant no choice but to testify. This is clearly a case where the Securities and Exchange Commission determined to move civilly in a punitive manner intending at all times to thereafter make a criminal reference.

* * * * * * * * * * *

MOTION TO SEVER

8. I respectfully submit that under the doctrine of Bruton v. United States, 391 U.S. 123, 20 L.Ed.2nd 476 (1968), that the defendant Ira Feinberg's trial must be sever from that of the other co-defendants. The Assistant United States Attorney in charge of this matter has indicated that he intends to use the statements of Mr. Feinberg's co-defendants at the trial of this matter.

Therefore, it is respectfully submitted that a severance under Rule 14 of the Federal Rules of Criminal Procedure is required.

EXCERPTS OF MINUTES OF TRIAL

CLERK'S COPY
RETURN TO COURT REPORTERS
ROOM 803 FOR FILING

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

- v s - : 73 Cr. 464

IRA FEINBERG and JOSEPH DELMONICO, :

Defendants. :

----------x

B e f o r e :

MORRIS E. LASKER,

District Judge.

November 12, 1974
10:10 a.m.

A p p e a r a n c e s :

PAUL J. CURRAN, ESQ.,
U. S. Attorney for the
Southern District of New York,
By: HOWARD WILSON, ESQ.,
Ass't. U. S. Attorney, of Counsel.

IRVING P. SEIDMAN, ESQ.,
Attorney for Defendant Feinberg.

GURSON SCHWELLER, ESQ.,
Attorney for Defendant Delmonico.

evidence is in, that you will surely find Joe Delmonico not guilty.

Thank you very much.

THE COURT: Thank you.

Call your witness, Mr. Wilson.

MR. WILSON: Your Honor, the Government calls Robert Crespi.

R O B E R T C R E S P I , called as a witness by the Government, being first duly sworn, testified as follows:

THE COURT: Mr. Crespi, you have a good, strong voice. Will you keep it up so everybody in the courtroom can here you, because the jury goes right down to the end there, and they have to hear everything you have to say.

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

BY MR. WILSON:

Q Mr. Crespi, what do you do for a living, if anything?

A I have been disabled for the past five years. I have been ill. I have been incapacitated.

Q When did you become ill?

A In January of 1970.

Q And prior to that time, what was your business?

A I had a newspaper delivery route, a home delivery

route.

Q Was that a service that you owned?

A A service owned; yes, sir.

Q Do you know Ira Feinberg?

A Yes; I do.

Q How long have you known Ira Feinberg?

A About ten or fifteen years.

Q Do you also know a man by the name of Ivan Ezrine?

A Yes, sir.

Q How long have you known him, or how many times have you seen him?

A I met him a few times.

Q During what period of time was that?

A I would say during 1969, prior to me getting ill.

OT 3b pm

C fol

Q Let me direct your attention, Mr. Crespi, to the Spring of 1969. At that time did you have a meeting with both Ira Feinberg and Ivan Ezrine?

A Yes, I did.

Q Where was that meeting?

A Mr. Ezrine's office.

Q Where was that?

A I believe in Manhattan on 68th Street.

Q Was anyone else present besides the three of you?

A No.

Q Would you tell the jury what was said at that time at that meeting?

A Well, they asked me for cooperation to help sell the --

MR. SEIDMAN: Your Honor, I object to the form of the question.

THE COURT: The form of the question?

MR. SEIDMAN: Yes, your Honor, utilization of the term, "they".

THE COURT: You mean the answer. The question was, "Will you tell me what was said".

MR. SEIDMAN: "What did they say?"

Q Try to tell us who said what to you during this meeting and what you said back to them during this meeting.

A I don't really remember who said what, but the main topic of the conversation was to help recommend the sale of Manor stock, and Mr. Ezrine was the one who said to me, "If we put you on the cover for $25,000" --

THE COURT: "If we put you on", what?

THE WITNESS: On the cover, on the prospectus.

THE COURT: Yes.

A -- "for $25,000, will you agree to return two-thirds of it after you get paid?"

And I said, "Yes."

Q Return it to whom?

A To both Feinberg and Ezrine.

Q Were you listed in the prospectus as receiving $25,000?

A Yes, I was.

Q Who was to give you the $25,000?

A The underwriter, Mr. Werner, I believe.

Q Mr. Crespi, I show you what has been marked Government Exhibit 1 for identification. Would you take a look at that and tell the jury if you have seen that before?

A Yes.

Q What is it?

A That is a $25,000 check drawn to my order, drawn

3 mcsr Crespi - direct

by Benjamin Werner & Company.

Q Does your name appear on the back of that check?

A Yes. He brought it to my home and I endorsed it and returned it back to him.

Q Who is that?

A Mr. Werner.

MR. WILSON: The Government offers what has been marked as Government Exhibit 1 into evidence.

MR. SEIDMAN: I have no objection.

THE COURT: I take it there is no objection, Mr. Schweller?

MR. SCHWELLER: No.

[Government Exhibit 1 received in evidence.]

***

Q Mr. Crespi, I show you what has been marked as Government Exhibit 2. Do you know what this is?

A Yes, that is a subscription for 2,500 shares of Manor stock.

Q Did you sign that document?

A Yes, I did.

Q When did you sign it?

A I believe it was February 19 or the 20th.

Q Was it the same day that you got the check?

A The same day I got the check.

THE COURT: What year was that?

THE WITNESS: 1970.

MR. WILSON: The Government offers what has been marked as No. 2 into evidence.

MR. SEIDMAN: Put it in.

MR. WILSON: No objection, Mr. Schweller?

MR. SCHWELLER: No objection.

MR. SEIDMAN: No objection.

*** [Government Exhibit 2 received in evidence.]

Q Do you recall, Mr. Crespi, what the circumstances were that caused you to convert the check, Government Exhibit 1, into stock?

MR. SEIDMAN: I have an objection to the form of the question, your Honor.

THE COURT: I will sustain the objection. You can ask if you want how he happened to sign the form.

Please be seated, Mr. Seidman.

MR. WILSON: I will adopt your Honor's suggestion.

Q Will you tell us how you happened to sign the form which is Government Exhibit 2?

A No, I really don't recall. Mr. Werner came to my home, brought the check and brought the subscription and simultaneously it was both done at the same time. There was no discussion about -- there was never a discussion about me getting stock.

Q Did you ever give any of the stock or any money back to either Mr. Feinberg or Mr. Ezrine?

A No, I didn't.

Q Did you ever talk to Mr. Feinberg about it?

A Yes, I did.

Q When did you have that conversation?

A Well, shortly after my illness.

Q Where was the conversation?

A At my home. Ira Feinberg came to visit me at my home.

THE COURT: About when do you say this was?

THE WITNESS: I would say this was around January -- February of 1970.

THE COURT: It was presumably sometime after the date of the check; is that right?

THE WITNESS: Oh, yes.

MR. SEIDMAN: I object to your Honor's Question because the witness has indicated a disparity in the date as to when the purported meeting took place.

THE COURT: Overruled.

Q Would you tell us what was said at that meeting, Mr. Crespi?

A Yes, Ira Feinberg came to visit me in my home. He heard I had a stroke, and he said to me, "Bob, now that

you are sick," he says, "forget about returning any of the money. You are going to need it yourself," and I didn't have to return any of the money.

MR. WILSON: Thank you, Mr. Crespi. I have no further questions.

*** CROSS-EXAMINATION

BY MR. SEIDMAN:

Q Mr. Crespi, how often had you met with Mr. Wilson?

A Mr. Wilson? Twice prior to today.

Q How often did he call you by telephone, if you can count?

A Twice.

THE COURT: Twice besides the meetings; is that right?

THE WITNESS: Right.

Q Did Mr. Wilson say to you that you could be a defendant in this case?

A No. No, he didn't.

Q Pardon me?

THE COURT: No.

A No, he didn't.

Q Did anyone on his staff tell you that you might have been a defendant in this case?

A No, sir.

mprf

United States of America

vs 73 Cr. 464

Ira Feinberg and Joseph Delmonico

New York, New York
November 13, 1974
10:00 a.m.

(Trial resumed.)

(In open court, jury present.)

THE COURT: Mr. Wilson.

MR. WILSON: Your Honor, Mr. Hoskins will examine the next witness.

MR. HOSKINS: The Government calls Alfred Cullere.

A L F R E D A. C U L L E R E, called as a witness by the Government, being first duly sworn, testified as follows:

THE COURT: Be seated, Mr. Cullere.

Gentlemen, I address myself to counsel and all the people in the room. In this courtroom, when someone is taking the oath, I request that everybody be seated and do nothing but allow the clerk to administer the oath, to stress the importance of the oath.

All right, Mr. Hoskins.

mprf 2 Cullere-direct

DIRECT EXAMINATION

BY MR. HOSKINS:

Q Mr. Cullere, what is your occupation?

A I am a builder, realtor and developer.

Q You will have to speak up a little. The jury and I are way back here, so be sure and keep your voice up.

Is that what you did for a living in 1969 and 1970?

A Yes.

Q Were you connected at that time with Emerson Nursing Home?

A Yes, I am the president or was the president.

THE COURT: President in 1969?

THE WITNESS: Yes.

Q Do you know a man named Ira Feinberg?

A Yes, I do.

Q Do you see him in court today?

A Yes. The man with the blue jacket.

MR. HOSKINS: For the record, identifying the defendant, Mr. Feinberg.

THE COURT: That's right.

Q When did you first meet Mr. Feinberg?

A The latter part of 1967 or early part of '68.

Q Did there come a time when you and Mr. Feinberg

were involved in a real estate transaction?

A Yes.

Q When was that?

A In 1968.

Q And what was that transaction?

A It was a sale of a piece of real estate in Emerson, New Jersey, zoned for a nursing home.

THE COURT: Well, you say you participated. What were your respective roles?

THE WITNESS: Mr. Feinberg was interested in buying it and I was interested in selling it.

Q Whom were you representing and whom was Mr. Feinberg representing in those discussions?

A I was representing the Emerson Nursing Home, which was my corporation, and Mr. Feinberg was representing the Manor Nursing Centres, and at the Manor in Emerson, I believe.

Q What was it that you were going to sell to Mr. Feinberg, basically?

A We were going to sell a piece of real estate in Emerson, New Jersey, zoned for 136 beds, nursing home site, with an approval from the FHA, plans and other approvals that went along with it.

Q So there was no building on it at that time, is

that correct?

A No, it was a piece of vacant land.

Q Did you and Mr. Feinberg reach an agreement as to the sale of that land?

A Yes, we did.

Q What was the purchase price to be that you agreed to?

A $400,000.

Q When was it approximately that you reached this agreement?

A October of '69 -- '68. I'm sorry.

Q October of '68?

A Yes.

Q Mr. Cullere, I show you what has been marked for identification as Government's Exhibit 3 and ask you to look at it and tell us if you can identify it.

A This is the contract that we signed for the sale of the property.

THE COURT: The contract between the corporations or between you and Mr. Feinberg individually.

THE WITNESS: It was between the corporations.

Q Does your signature appear on that exhibit?

A Yes.

Q And Mr. Feinberg's?

A Yes, sir.

MR. HOSKINS: Government offers Exhibit 3.

MR. SEIDMAN: Your Honor, may I examine the witness with respect to this exhibit?

THE COURT: As to its authenticy or what? That would be the only question.

MR. SEIDMAN: I most respectfully state that there is a misstatement of fact that I would like to correct before the witness continues to testify.

THE COURT: Misstatement of fact where?

MR. SEIDMAN: As to what the corporate entity was, as to the buying corporate entity.

THE COURT: Well, I suppose the buying corporate entity is specified on the agreement. In any event: Whom do you say was the buyer in that agreement?

THE WITNESS: I believe it was the Manor Nursing Centres and the Manor at Emerson.

MR. SEIDMAN: I would hold that. I have no objection --

THE COURT: Let's get this clear. I don't want things to be unclear. Is that not what the paper says?

MR. SEIDMAN: If your Honor please, as I understand the witness' previous testimony, he stated that the purchaser was Manor Nursing Centres and the document clearly states

that the purchaser was or is the Manor of Emerson, a corporation of New Jersey.

THE COURT: Is that whom you understand to have been the buyer or proposed buyer?

THE WITNESS: Yes.

MR. SEIDMAN: So long as the record is clear I have no objection to that being offered.

THE COURT: Very good. The document is received in evidence.

(Government's Exhibit 3 for identification received in evidence.)

xx

Q Mr. Cullere, did you have discussions with Mr. Feinberg as to who the owner was of the Manor of Emerson?

MR. SEIDMAN: I object to the form of the question as being leading, and I would respectfully request that counselor, the attorney for the Government, phrase his questions as to permit the witness to answer.

THE COURT: There is a leading element to that, but in a case that involves as much as we have to cover here I will allow preliminary leading. The witness can say if he didn't have such conversations.

Will you repeat the question, Mr. Hoskins?

MR. HOSKINS: Yes.

Q Did you have any conversations with Mr. Feinberg about who owns Manor of Emerson?

A It was my understanding --

THE COURT: We don't want your understanding. The question is whether you had any conversations.

A Yes. Mr. Feinberg said that the Manor of Emerson Nursing Center was going to be the owner of the property.

Q Was going to be or was at that time?

A Was at that time. My understanding was that it --

Q Don't tell us what your understanding was.

MR. SEIDMAN: I am going to object to this type of suggestive questioning.

THE COURT: Mr. Seidman, Mr. Hoskins was quite correct in telling the witness or any witness not to tell us what he understood but to tell us the fact.

Will you please be seated, Mr. Seidman?

MR. SEIDMAN: Possibly he doesn't know what the facts are, your Honor.

THE COURT: Your objection is overruled. Please be seated.

There is some confusion, at least in my mind. It seemed to me the question you asked was whether there were any conversations with Mr. Feinberg about who owned Manor of Emerson. Did I misunderstand you?

MR. HOSKINS: That is correct.

THE COURT: And the answer given did not respond to that but the answer had to do with who would own the land, as I understood it.

MR. HOSKINS: Let me rephrase the question. I think I can clarify it.

Q Would you tell me, yes or no, if you had any conversations with Mr. Feinberg as to who owned at that time Manor of Emerson?

MR. SEIDMAN: If your Honor please, I most

respectfully state that that question properly phrased should be: Did you have any discussions with Mr. Feinberg? What did he say to you and what did you say to him?

THE COURT: Overruled. We will be here five or six weeks if we go on this way, or six or seven weeks. Let's get the story.

MR. SEIDMAN: I have no objection, but I object to questions that suggest answers, your Honor.

THE COURT: So I understand.

All right, Mr. Seidman, may we please finally have the question answered?

Mr. Reporter, would you please read back the question? Let's get the answer to this question. Please listen to the question, sir.

[Question read.]

THE COURT: We are talking about who owned the corporation, not who owned any land.

THE WITNESS: The answer is yes.

Q What did Mr. Feinberg say to you or did you say to Mr. Feinberg in those conversations?

A Mr. Feinberg told me that the Manor Nursing Homes owned that particular corporation.

Q Directing your attention to February of 1970

had various payments been made at that time by Manor for the purchase of Emerson?

A What time was that?

Q February of 1970.

A Yes, payments were made.

MR. SEIDMAN: If your Honor please, at this time I would object on the grounds that in view of the fact that the term Manor, M-a-n-o-r, or the name Manor has many descriptive attached words that counselor for the Government specify which Manor he is speaking about and the witness be directed to indicate which Manor he is speaking about, if he in fact knows.

THE COURT: I will ask counsel please to specify about which corporation he is inquiring.

MR. HOSKINS: Very well.

THE COURT: Or to bring it out through the witness, one or the other.

Q February of 1970 had various payments been made by Manor of Emerson in connection with the purchase?

A Yes, approximately $152,000.

THE COURT: You mean in February or by February?

MR. HOSKINS: By February.

THE COURT: $150,000 to --

THE WITNESS: $152,500. I believe that is what

it was.

Q Subsequent to the agreement of October 1968 were there modifications entered into between you and Manor of Emerson?

A Yes.

MR. SEIDMAN: Again, modification is a term of law. I believe counselor is raising those questions improperly suggesting answers to the witness.

THE COURT: Overruled.

A I answered yes.

Q And as the agreement finally stood by February of 1970, would you tell us if there was a change in the purchase price of the land?

A No, there was no change in the purchase price.

Q Was there any change in the means of payment of the purchase price?

A Yes, that had changed.

Q How had that changed?

A Instead of receiving $400,000 in cash we were to receive $340,000 and $60,000 of unregistered stock.

Q Again, directing your attention to February of 1970, how much was still due and owing to Emerson from Manor of Emerson at that time?

A About $179,000.

Q I'm sorry?

A $179,000.

Q Be sure to keep your voice up.

Did you have occasion at about that time to meet with Mr. Feinberg?

A Yes, we did.

Q Where did that meeting take place?

A In my office.

Q Would you tell us what Mr. Feinberg said to you and what you said to him?

THE COURT: As nearly, as precisely as you can, can you tell us when this occurred?

THE WITNESS: It was on or about February 20, 1970.

THE COURT: And this was at your office?

THE WITNESS: At my office, yes.

THE COURT: Where is that?

THE WITNESS: At 253 South Washington Avenue, Bergenfield, New Jersey.

THE COURT: Was anybody present besides you and Mr. Feinberg?

THE WITNESS: No.

THE COURT: All right, go ahead.

A At that meeting Mr. Feinberg told me that he

was having problems closing his stock transaction, which at that time was the Manor Nursing Centers. I was having problems financially in my own corporation. We were trying to close this particular real estate transaction. Mr. Feinberg suggested at that meeting that he would give me $79,500 if I would cooperate and buy back -- well, with the proceeds which was $79,500, and $100,000, he suggested that --

THE COURT: You are going too fast, at least for me.

He said that he would give you how much?

THE WITNESS: $79,500.

THE COURT: If you would do what?

THE WITNESS: If I would purchase or sign back the balance of the funds that we were going to receive at the closing of the real estate.

Q At which closing?

A At the closing for the real estate transaction. If I were to sign that back and buy 10,000 shares of Manor Nursing Center stock.

THE COURT: For $100,000?

THE WITNESS: For $100,000. I told him at that time that we were in financial -- had our own financial problems and that I didn't want to go along with

something like that.

I was looking forward just to collecting the monies due to the Emerson Nursing Home Center -- Emerson Nursing Home, Inc., our corporation.

We had discussed -- Mr. Feinberg suggested that -- I had told him that I would not go along with something like that unless I had some firm guarantees as to the payment or the repayment of the $100,000. Mr. Feinberg then told me that he would give me a put, which at that time I didn't understand what it was. Mr. Feinberg explained to me that it was a form of guarantee; that the stock transaction that I would be involved in would be guaranteed; that I would not lose anything from $100,000.

At that point I asked Mr. Feinberg if he would put it in writing. He would not. So, that wasn't good enough for me, and we continued talking until Mr. Feinberg came up with another suggestion and told me that he would give me a second check for $100,000; that if the stock, his stock, did not close, that I could deposit this check and regain my $100,000, and that is the way it closed.

Q Mr. Cullere, I show you what has been marked as Government Exhibit 4 for identification and ask you if you can identify that.

A This is a copy of the check that Mr. Feinberg gave me, the second one, the $100,000 check.

Q The check that you were to keep?

A Right, yes.

Q That is a Xerox copy, is it not?

A Yes.

Q Who made that copy?

A I made the copy.

Q When?

A Probably the day -- the day we received the dollars. The day I received it or the day after I made copies of it.

THE COURT: When was that?

THE WITNESS: February 20 or February 21 of 1970.

THE COURT: The day you received the dollars?

THE WITNESS: No, I received three checks, your Honor. I received the check for $79,000, which I was going to cash or deposit. I received on check for $100,000 which I endorsed back to Mr. Feinberg or to the Manor or Manor Nursing Centers. I'm not sure which one I endorsed it back to.

MR. SEIDMAN: I would like that answer repeated to make sure the reference to Manor is clear.

THE COURT: He says he is not sure which one

it was.

A The third check was $100,000 that Mr. Feinberg gave me as security against the check, the second check, which I bought the stock.

THE COURT: The check that you are holding in your hand is a copy of the third check?

THE WITNESS: Yes, that is right.

Q I show you Government's Exhibit 5 for identification and ask you if you can identify that.

A This is the check that I endorsed back to Mr. Feinberg, which we purchased the 10,000 shares of stock.

THE COURT: Is that the second of the checks?

THE WITNESS: That is the second of the checks.

Q You endorsed that back and gave it to Mr. Feinberg?

A Yes, sir, I did.

Q I show you Government Exhibit 6 and ask you if you can identify that.

MR. SEIDMAN: If I might respectfully request, when exhibits are being identified I, as counsel for Mr. Feinberg, would like to see them individually.

THE COURT: I don't see why counsel is entitled to see an exhibit before it is identified.

MR. SEIDMAN: I said after each one is identified.

THE COURT: No, they can be collectively presented. Otherwise you have to keep walking back and forth in the courtroom.

MR. SEIDMAN: All right.

A This is the first check Mr. Feinberg gave me which is part payment of the monies due on the real estate transaction.

Q In what amount?

A $79,500 .

Q That you kept?

A This we kept and deposited.

MR. HOSKINS: The Government offers Exhibits 4, 5 and 6.

MR. SEIDMAN: If your Honor please, might I just ask -- I have no objection to these checks going into evidence and I know your Honor has instructed me that the documentary evidence speaks for itself. However, at this time --

THE COURT: I didn't make up that rule.

MR. SEIDMAN: I haven't suggested that, your Honor. However, I believe that it is a very esoteric.

THE COURT: What is it that is the problem now?

MR. SEIDMAN: These are checks, your Honor,

that I do not question were issued and neither does my client. However, I believe that what is important is to determine what counsel for the Government has failed to do and if I might respectfully read into the record the name of the maker of these checks and the party who issued them --

THE COURT: You can read it into the record when your time comes. The question is whether they are admissible or not.

Is there any objection to their admissibility on these grounds? If you have an objection to their admissibility, state it.

MR. SEIDMAN: I have an objection on the ground that the witness has not stated the name of the maker of the check and counsel for the Government has indicated that these checks originated from either Mr. Feinberg or Manor Nursing Centers and the fact is --

THE COURT: Counsel hasn't indicated who they came from. He just asked the witness what these checks represent and the witness answered it. They are received in evidence.

MR. SEIDMAN: Very well. I will deal with that later. Thank you.

[Government Exhibits 4, 5 and 6 received

in evidence.]

Q Mr. Cullere, directing your attention to Government Exhibit 4 in evidence, would you tell us what the conversation was that you had at that time, that is, the time of the meeting that you testified about with Mr. Feinberg, in relationship to under what conditions, if any, you were to cash that check?

A Mr. Feinberg told me at that meeting that this would be a check to act as security against the check that I had given him for the purchase of this stock; that if at a later date the stock did not close or went below the dollar value of $10 per share which we paid for that, I could deposit this check.

Q Did there come a time when you received a confirmation in connection with this purchase?

A Yes, sir, I did. It came by mail.

Q I show you Government Exhibit 7 for identification and ask if you can identify it.

A Yes, this is a confirmation that came attached to the stock certificates.

THE COURT: Would you tell me who was shown as the purchaser?

THE WITNESS: The Emerson Nursing Centers, Inc.

THE COURT: It is confirmation for the purchase

of what?

THE WITNESS: 10,000 shares of stock.

THE COURT: Of what company?

THE WITNESS: I'm sorry, your Honor, I misread. It is 10,000 shares of Manor Nursing Centers, Inc. stock and it was mailed to Emerson Nursing Homes, Inc.

Q And the purchase price was what?

A $100,000.

MR. HOSKINS: The Government offers Exhibit 7.

MR. WILSON: We have prepared an exhibit list. Perhaps it would help the order of things if I gave you one, your Honor.

THE COURT: Any objection to Exhibit 7?

MR. SEIDMAN: For whatever it is worth, I have no objection.

THE COURT: Would you just tell us whether you object or not?

MR. SEIDMAN: I have no objection.

THE COURT: Don't say "for whatever it is worth." That is up to the jury to decide what it is worth.

MR. SEIDMAN: I agree, your Honor.

[Government Exhibit 7 received in evidence.]

Q Mr. Cullere, I next show you Government Exhibit 8 for identification, what appears to be a check, and ask

you if you have ever seen that before.

A Just in your office.

Q At no time in 1969 and 1970 did you see that?

A No, I have never seen this check.

Q I show you Government Exhibit 9 for identification and ask you whether your signature appears on that page.

A No, it does not.

MR. SEIDMAN: Might I be permitted to see what counsel has shown the witness?

THE COURT: I suppose so, but they haven't been offered in evidence.

MR. SEIDMAN: I would still like to see them in view of the fact that they were shown to the witness.

THE COURT: Surely.

MR. SEIDMAN: Thank you.

THE COURT: Can you be seated, Mr. Seidman, so Mr. Hoskins can continue with his questioning.

Q Finally, Mr. Cullere, I show you Government Exhibit 10 for identification and ask you if you can identify that.

A Yes, I can.

Q What is it?

A It is a check that Mr. Feinberg wrote out to Mr. George Quinn for $4,000.

THE COURT: Wrote out to whom?

THE WITNESS: Mr. George Quinn for $4,000. Mr. Quinn endorsed it and gave it to me as a part payment of a loan.

THE COURT: From whom to whom?

THE WITNESS: From Mr. Quinn to me. The loan was from myself to Mr. Quinn and he repaid me.

MR. SEIDMAN: If your Honor please, I most respectfully would like to have with respect to any of these checks an indication from the Government as to what the relevancy and materiality these pieces of paper that are being shown to the witness have to this case in advance.

THE COURT: I'm sure they will do that in due course. I'm not sure that it is for you or for them to make an explanation at each moment.

MR. SEIDMAN: Very well.

MR. HOSKINS: The Government offers Exhibit 10.

THE COURT: If there is a problem, we'll discuss it at the side bar.

MR. SEIDMAN: I have no objection to this going in, except I would like to have a conference because I don't want to --

THE COURT: I will reserve decision on its

admissibility, then, until the Government explains to me what the relevance is.

MR. SEIDMAN: I believe it is important to make sure that this record is not in any way --

THE COURT: I am reserving decision. I am not admitting it.

MR. SEIDMAN: I have no objection to it going in. However, I would like a conference.

THE COURT: I don't want to break up the trial at this moment.

MR. SEIDMAN: I have no objection to this going in.

MR. HOSKINS: No further questions of this witness.

MR. SEIDMAN: May I have those exhibits, please?

MR. HOSKINS: Yes.

[Government Exhibit 10 received in evidence.]

CROSS-EXAMINATION

BY MR. SEIDMAN:

Q Is your name pronounced Mr. Cullere?

A Yes.

Q My name is Irving Seidman. Have you ever met me?

A No.

Q Have you ever spoken to me?

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THE COURT: Don't you know what the exhibit is --

MR. SCHWELLER: My client had nothing to do with this. I never saw the document before.

THE COURT: I am sorry. I was proceeding on the assumption that you were familiar with it.

MR. SCHWELLER: No. I have never seen it, your Honor.

THE COURT: All right.

(Pause.)

THE COURT: Let me suggest that we take a morning recess at this time, so that Mr. Schweller can examine the document.

(Recess.)

MR. SCHWELLER: Your Honor, I have examined the document and I have no objection.

THE COURT: Very good.

MR. SEIDMAN: I have no objection, your Honor, subject to other proof.

THE COURT: Well, it will have to be connected ultimately with the defendants in this case or you can move to have it stricken.

MR. SEIDMAN: Very well.

(Government's Exhibit 11 for identification received in evidence.)

THE COURT: Do you have an extra copy of Exhibit 11 Mr. Wilson?

MR. WILSON: Yes, your Honor. We have a lot of them.

Q Mr. Cullere, did you have occasion, prior to Febru 20th, 1970 to have read or looked at the prospectus for a company called Manor Nursing Centres, Inc.?

THE COURT: Government's Exhibit 11.

Q Government's Exhibit 11.

A Prior to --

THE COURT: February 20th.

A I don't remember.

Q You don't remember. Very well.

MR. SEIDMAN: If your Honor please, in view of the fact that this is an exhibit, may I read a portion of it into the record.

THE COURT: Let the record show that I am reading from Government's Exhibit No. 11, particularly page 14.

"(iv) Emerson, New Jersey--The Company has purcha approximately three acres of land located on the west side of Kinderkamack Road (opposite the River Dell Hospital), in Emerson, New Jersey. The purchase price of $400,000 for such acreage and other costs was paid as follows:

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$72,500 in cash; the assumption of the remaining balance of $8,000 on a first mortgage due in full not later than August 11, 1970, bearing interest at the rate of 6% per annum; an additional $10,000 paid on October 31, and November 10, 1969 and $299,500 to be paid on December 1, 1969. Of such total remaining unpaid purchase price of $299,500, the Company has delivered in escrow an aggregateof 10,000 shares of its authorized, unissued Common Stock in payment of $60,000, of such purchase price, the delivery of such shares and the acceptance thereof being dependent upon the effectiveness of the Registration Statement of which this Prospectus forms a part. In the event such Registration Statement is not effective prior to December 1, 1969, the Company is required to discharge the remaining balance of $299,500 at the rate of $30,000 per month commencing December 10, 1969, and each month thereafter."

Q Now, isn't it a fact, Mr. Cullere, that at one time you had agreed as part of the purchase price, to take stock of Manor Nursing Centres, Inc. with respect to the sale by you or your corporate entity of the Emerson piece?

A Did you say stock or unregistered stock? I didn't hear you.

Q I said stock of Manor Nursing Centres, Inc.

A Yes.

MR. SEIDMAN: I have no further questions of this witness, your Honor.

MR. SCHWELLER: I have no questions.

MR. HOSKINS: Very briefly, your Honor.

REDIRECT EXAMINATION

BY MR. HOSKINS:

Q Mr. Collere, directing your attention to the land deal, that is to say, the deal for the land in Emerson between you and Manor of Emerson, do you recall when that deal closed, when it was actually consummated?

A I believe it was in March of 1970.

Q You testified earlier that there were modifications to the October 16, 1968 agreement signed by you and Mr. Feinberg. Do you recall that?

A Yes.

Q Do you recall if there came a time when Manor Nursing Centers, Inc., in addition to Manor of Emerson was made a party to one of those modification contracts?

A Yes.

Q When was that, approximately?

A It was in 1969. I don't remember the date.

Q Do you recall who was representing Manor Nursing Centers, Inc. at that time in your negotiations?

A I know who he is, but I can't think of his name.

Q In connection with that check, was there ever a time when you or someone at your direction made any inquiries as to whether or not there was funds sufficient to cover that check?

A I don't remember.

Q Do you recall whether you ever had any conversations with your bookkeeper about whether that person had made inquiries?

A I had a conversation with my bookkeeper, but she doesn't remember checking out with the bank whether the bank, the balance in the bank was discussed. She doesn't remember.

Q Mr. Seidman also asked you about the prospectus. Directing your attention to late 1969 and early 1970, did you ever see the prospectus during that period?

A Yes.

Q Do you recall Mr. Seidman's questions to you about the 10,000 shares of stock which Emerson, your corporation, was to receive from Manor in connection with the land deal?

A Do I remember it?

Q Yes.

A Yes.

Q Do you recall Mr. Seidman reading from the

prospectus concerning those 10,000 shares?

A I don't remember all of it, but I remember parts of it.

Q Would you tell us whether the 10,000 shares which were given to you, that is, given to Emerson in connection with the land deal were the same 10,000 shares that you purchased from Mr. Feinberg on or about February 20 or --

A No, they were different. They were two different transactions.

Q What was the difference between the stock, if any?

A The 60,000 shares were unregistered stock.

Q How many shares?

A $60,000 worth. It was 10,000 shares of unregistered stock, and the other one was a stock that was tradable.

Q Which was which? You say one was unregistered and one was tradable.

A 10,000 shares of unregistered were part of the contract and purchase of the land deal that we had. The 10,000 shares of stock that we purchased at $10 per share was negotiable stock.

Q By negotiable you mean registered?

A Tradable.

Q Was it part of the public offering that Manor Nursing Centers, Inc. was having at that time?

A The second 10,000 shares.

Q The registered shares, yes.

A No, not that I know of.

Q Were you registered; that is, were you able to publicly trade them?

A Yes.

Q The 10,000 shares were part of the land deal and which Mr. Seidman read to you --

MR. SEIDMAN: I object to the use of adjectives that I don't believe there is sufficient testimony about.

THE COURT: Such as what?

MR. SEIDMAN: The term 10,000 shares that are part of the land deal.

THE COURT: The witness just a minute ago testified that there were 10,000 shares that were part of the land deal.

MR. SEIDMAN: As to the Emerson deal, I have no objection.

THE COURT: May I see the contract, please, the real estate contract?

MR. HOSKINS: The original one is Exhibit 3.

Just to make clear in my own mind as well as for the jury: Am I correct in understanding that there were actually two purchases of Manor Nursing stock by your company?

THE WITNESS: Yes.

THE COURT: One in accordance with the contract and the other, the one that we have described as the transaction of February 20th?

THE WITNESS: Yes.

MR. HOSKINS: I have nothing further.

RECROSS EXAMINATION

BY MR. SEIDMAN:

Q One thing I wish to clear up in my own mind although maybe I shouldn't, but I will:

MR. WILSON: Your Honor, I must object to remarks like that.

MR. SEIDMAN: Well, we are all human.

THE COURT: All right.

Q The $100,000 check that you endorsed to Benjamin Werner & Company: were processed by Emerson Nursing Homes, Inc. as payment for the property it was sellin to Manor Nursing? Is that correct?

A Yes.

MR. SEIDMAN: I have no further questions.

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THE COURT: Very good.

Thank you very much. You are excused.

(Mr. Cullere excused.)

MR. WILSON: The Government calls Mr. Netelkos.

C H R I S T O S L. N E T E L K O S, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR.WILSON:

Q Mr. Netelkos, what do you do for a living now?

A I am the president of Melbourne Equities Corporation.

Q And what is the business of Melbourne Equities?

A It's a company that makes loans to other corporations.

Q How old are you, sir?

A 33.

Q Are you married?

A Yes.

Q Do you have any children?

A Three.

Q Now, Mr. Netalkos, have you pled guilty to the conspiracy charged in the indictment that is the subject of this trial?

A Yes.

Q And had you ever been convicted of any other crimes?

A No.

Q Did there come a time, Mr. Netelkos, when you met a man named Ira Feinberg?

A Yes.

Q When was that?

A I met Mr. Feinberg in December 1969.

Q And where did you meet him?

A I met him at my office at 39 Hudson Street, Hackensack, New Jersey.

Q Do you see Mr. Feinberg here in court?

A Yes.

Q Would you indicate where he is seated?

A It's the gentleman at the second table.

THE COURT: What is he wearing?

THE WITNESS: A blue -- a blue suit.

MR. WILSON: May the record reflect the identification has been made, your Honor.

THE COURT: Right. Meeting with Monroe Kessler

Q Who else was at this meeting with Mr. Feinberg?

A Mr. Monroe Kessler.

Q And who was Mr. Kessler?

A Mr. Kessler at the time was a manager and a shareholder of Carlton-Cambrige & Company, a broker-dealer.

Q And what was Carlton-Cambrige, exactly?

A Carlton-Cambrige was a broker-dealer that bought and sold securities in the State of New Jersey.

Q When you say broker-dealer, is that a brokerage house?

A Yes.

Q A company that sells stock?

A Yes.

Q What position did you have at Carlton-Cambrige?

A I was the chairman of the board.

Q Did you have any ownership interest in the company?

A Approximately 70 per cent.

Q Now, would you tell us what was said by each of the participants in this meeting?

A I was handed a prospectus by Mr. Feinberg, and he indicated to me --

THE COURT: What was it a prospectus of?

THE WITNESS: It was a prospectus of Manor Nursing Centres.

A (Continuing) He indicated to me that he was seeking brokerage houses to help him sell securities. I reviewed the prospectus, and I asked Mr. Feinberg certain questions relating to facts in the prospectus. The questions

were the -- a more definitive use of proceeds. I wanted to see the exhibits and related documents filed with the Securities and Exchange Commission.

Q Could you keep your voice up?

A . And the related documents filed with the Securities and Exchange Commission.

MR. WILSON: Your Honor, I must once again make some comments about Mr. Seidman's comments. I think this is ridiculous.

THE COURT: I'm sorry. I was looking down here. What is the reason --

MR. WILSON: Mr. Seidman removed himself from the counsel table.

THE COURT: Excuse me. Will you resume your seat at the counsel table?

MR. SEIDMAN: I apologize most respectfully, your Honor.

Q I was asking you what exhibits they were that you were asking Mr. Feinberg for.

A When a company files with the Securities and Exchange Commission to sell securities he has to file a set of exhibits. The exhibits are the charter of the corporation, the minutes, detailed analysis of the company, facts that aren't part of the prospectus that is used to solicit customers to buy

MR. SEIDMAN: Very well.

Q How many shares did you discuss with Mr. Feinberg that Carlton-Cambrige would try to sell?

A At the first meeting he wanted a substantial amount of shares, and I believe that I didn't commit to him the amount of shares.

THE COURT: I am not quite clear, Mr. Netelkos. When you use the phrase that he wanted a substantial number of shares, that he wanted to sell overall or he wanted your company to sell.

THE WITNESS: He wanted Carlton-Cambrige & Company to participate with his underwriter, Benjamin Werner, to sell a number of shares --

MR. SEIDMAN: Your Honor, there is no testimony in this case that Benjamin Werner was his underwriter for Ira Feinberg.

THE COURT: We aren't talking about Manor Nursing Centres.

Nobody claims the Government or anyone else, that Mr. Feinberg was selling stock in himself. May we proceed?

MR. WILSON: Your Honor, it might be helpful at this time if I simply read part of the prospectus to the jury.

Prospectus

Who prepared Govt Exhibit #11

to selling stockholders. At the bottom is $895,000, proceeds to company is $3,132,500.

I direct your attention to note 4 on the front page. That note says, "This offering is being made on an 'all or nothing' basis. All sums collected from subscribers will be held in a special bank account at Chemical Bank, New York, New York, and refunded promptly, without interest, if all of the shares are not sold within 60 days from the date hereof (unless extended by mutual consent for an additional thirty day period). (See 'Underwriting' herein.)"

The date hereof is at the very bottom of the page, "The date of this Prospectus is December 8, 1969."

I would now like to turn to the underwriting portion that was just referred to in that note, which you will find on page 20 of the prospectus and I would like to just read the first three paragraphs.

"The Company and the Selling Stockholders have entered into an Underwriting Agreement with Benjamin Werner Co. as Underwriter, pursuant to which the Underwriter has been engaged, as the exclusive agent of the Company and the selling Stockholders, to sell to the public on an 'all-or-none' basis the 450,000 shares of Common Stock offered hereby for a period of sixty (60) days following

the date that the public offering hereunder commences. Unless all such 450,000 shares are sold to the public and the proceeds received therefrom within such sixty (60) day period (unless extended for an additional thirty day period), the offering will terminate and all funds will be returned, without interest, to subscribers. Arrangements have been made with Chemical Bank for the escrow of the fund received during the course of such offering.'

"The Underwriting Agreement further provides that if the 450,000 shares are sold and paid for as aforesaid, then the sales shall be declared effective and the Underwriter shall deduct from the $4,500,000 derived from the sale of such shares (i) the sum of $450,000 representing commissions payable to the Underwriter on the sale of such shares and (ii) up to the sum of $22,500 representing the non-accountable expense allowance to the Underwriter; and the balance of the said proceeds shall be remitted to the Company and the Selling Stockholders.

"The Underwriter proposes to offer the shares in part to retail purchasers and in part to selected dealers who are members of the National Association of Securities Dealers, Inc., and to allow such dealers a concessio of not in excessof $.50 per share. Selected dealers may

reallow a concession of not in excessof $.25 per share to certain other dealers."

At this time, your Honor, that is the only portion of the prospectus I want to read.

THE COURT: Now, if either counsel wishes to read a portion of the prospectus relating to the subjects that Mr. Wilson has dealt with, they may do so. If they wish to read any other portions later on in their own examinations of the witness, they may do so.

Let's proceed.

BY MR. WILSON:

Q Was Carlton-Cambrige a selected dealer or could it be a selected dealer?

A Carlton-Cambrige eventually became a co-underwriter.

Q What is the National Association of Security Dealers, Inc., referred to in the prospectus that you have just read?

A The National Association of Security Dealers is a quasi-government agency that helps regulate the securities industry.

Q And was Carlton-Cambrige a member of that group?

A Yes, they were.

MR. SEIDMAN: If your Honor please, I would object

Co-Underwriter alone

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Q Did you meet with Mr. Feinberg in January?

A Yes, I did.

Q When was that?

A It was -- I believe it was in the first week of January.

Q And where was that? Meeting only with Feinberg

A It was at my office in Hackensack.

Q And was anyone else there besides the two of you?

A No, it was Mr. Feinberg and myself.

Q And will you tell us what was said at that meeting?

A Mr. Feinberg gave me some additional documents that were still -- that I still didn't have. I told him that -- that selling the stock through Carlton-Cambrige to 30,000 shares that he would like to sell would be very difficult and that the only way that there is a possibility of selling the securities would be to getting other dealers to participate as part of a selling group.

Now, I told him that to do it this way is more time consuming and it is costly and I would like to get compensated for it.

He asked me what I meant by compensation and I told him that I would like to receive a dollar a share and he said -- I said to him I would like to receive a share in

cash and he said, "There is no problem, no problem with cash."

At that meeting -- at that point we shook hands on the agreement that I would do the 30,000 shares of stock and that I would receive compensation of one dollar per share from my selling 30,000 shares.

Q When you say you are selling, were you personally going to do the selling?

A What I was going to do is to bring together a group of dealers to sell, but I would be instrumental in bringing this group together.

Q In what entity would the stock be purchased? Through what entity, I should say.

A I would cause Carlton-Cambrige to sign a selective dealer's agreement with Manor Nursing Centres for the sale of $30,000.

Q Would that be with Manor Nursing or with the underwriter?

A With Manor Nursing and the underwriter.

Q And was Carlton-Cambrige as an entity discussed in your meeting with Mr. Feinberg?

A Yes, they were. Yes.

Q And what was the discussion about Carlton-Cambrige?

A I told him that as part of Carlton-Cambrige's

Prospectus says Exhibit "11"

participation I would like him to come down to the offices in Hasbrouk Heights and talk to a few of the account executives, I would set up a meeting and he can make a presentation on behalf of his company. I also told him that he should be prepared to answer questions.

Q Was there anything said about compensation to the entity, Carlton-Cambrige?

A Yes. The underwriter, Benjamin Werner was getting one dollar a share.

Q When you say he was getting one dollar a share, will you tell jury what you mean?

A The issue was sold at $10 a share and the dealer who was selling the stock as an agent for the company, an agent for the issuer, was to receive compensation of one dollar per share for every share that he sold. He also receives a non-accountable expense of five cents a share for advertising and other -- mailing out the confirmations and the prospectus.

Q Now, was there any discussion about what Carlton-Cambrige would receive from the underwriter?

A Carlton-Cambrige would receive the exact amount that Benjamin Werner would receive.

Benjamin Werner would receive one dollar per share.

Q Is that the same one dollar that you were just

talking about, that you were going to get?

A No, that is different. My compensation was additional compensation over and above the dollar a share that Carlton-Cambrige would receive for selling the securities.

Q And where would you get your dollar a share?

A Directly from Mr. Feinberg, in the form of cash.

THE COURT: Carlton-Cambrige was to get its dollar a share from Manor Nursing, from the issuer?

THE WITNESS: From the issuer, yes.

Q Well, was it from the issuer or was it from the underwriter, Mr. Netelkos?

A Well, it's -- the Manor Nursing would pay the underwriter and the underwriter would pay Carlton-Cambrige.

Q Now, after this agreement, what did you do?

A I arranged for a meeting with Mr. Feinberg and some of the principals and salesmen at Carlton-Cambrige, and I contacted other dealers to become part of a selling group to -- to sell the Manor Nursing stock. I also went to the facility to look at the nursing home, and at the facility I asked Mr. Feinberg additional questions about the actual facility.

Q Did there come a time when you had a meeting with Mr. Feinberg about a larger purchase than 30,000

Alone

shares by Carlton-Cambrige?

A Yes.

Q When did that happen?

A That happened at the -- it happened at the end of January, I believe.

Q And where did you talk to him?

A It was in my office.

Q Who was present?

A Mr. Feinberg and myself.

Q Would you tellus what was said at that meeting?

A Mr. Feinberg asked me how was I doing with selling the 30,000 shares and I told him that I was having difficulty selling the shares. He indicated that he was having some problems with getting stock sold in Europe with Mr. Ezrine.

Q Who is Mr. Ezrine?

A Mr. Ezrine was the counsel for the issuer.

Q You mean for Manor Nursing Centres?

A Yes, preparing the registration statement.

THE COURT: Did you say that Mr. Ezrine said he was having trouble selling stock in Europe?

THE WITNESS: Yes, and that he needed 100,000 shares of stock to be sold. I told him initially that that was an impossibility, because I am having difficulty

selling the 30,000 shares, that I couldn't commit to selling the additional shares.

We then discussed different possibilities of selling the shares, and then I told Mr. Feinberg that I am in the process of making an investment in a large member firm of the New York Stock Exchange, Orvis Brothers, and there is a possibility of Orvis Brothers having the capability of selling the balance of the shares to make 100,000 share commitment.

I told Mr. Feinberg to do that as part of my investment into Orvis Brothers. I am seeking a loan of $250,000. Mr. Feinberg said that if I could sell the 100,000 shares of stock, that he would make the loan available of $250,000.

MR. WILSON: Your Honor, I'm sorry, but the matter we discussed earlier has just arisen again and I just don't think I ought to let it go unnoticed.

THE COURT: We will recess for lunch at this time and we resume at 2:00 o'clock.

(Jury left the courtroom.)

(Luncheon recess.)

CHRISTOS NETELKOS, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. WILSON (Continued):

Q You were telling us, Mr. Netelkos, about a conversation in which you first broached the matter of a loan of $250,000 from Mr. Feinberg.

Do you recall telling us about that conversation? Do you recall telling us about that conversation?

A Yes.

Q Will you tell us in detail what happened in that meeting?

A It was a meeting that I had --

Q And keep your voice up.

A It was a meeting that I had between myself and Mr. Feinberg, relating to selling an additional 100,000 shares -- selling a total of 100,000 shares of Manor Nursing stock. I told him it would be impossible to sell that many shares, I don't have the capability or I can't bring together a selling group large enough to sell 100,000 shares of stock.

I said there was only one possibility of being able to sell it, and that is through a member firm of the New York Stock Exchange called Orvis Brothers.

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I told him that I was in the -- contemplating making an investment in Orvis Brothers, and I was trying to arrange a loan for $250,000.

I told Mr. Feinberg that if I could obtain that loan for $250,000, there is a good possibility of being able to sell the 100,000 shares of stock. He then said to me that if I could commit to him to sell the 100,000 shares of stock he would make a loan available to me of $250,000.

That was the extent of the conversation.

Q Did you agree to make that commitment?

A I agreed to -- to make a commitment of 100,000 shares of stock, yes.

Q In what-- what entity was going to commit itself to purchase that 100,000 shares?

A Carlton-Cambrige & Company.

Q Now, did you have another conversation with Mr. Feinberg in which you discussed this 100,000 shares?

A Yes. It --

Q When was that with relation to this meeting you just told us about?

A This meeting was, I believe, the end of January, and the second meeting was during the first ten days of February.

Q This meeting you are about to tell us about took

Alone

place the first ten days of January? 80a

A Yes -- of February.

Q Of February.

And who was present at this meeting?

A I called the meeting. It was myself and Mr. Feinberg.

Q Will you tell us what you said at that meeting?

THE COURT: Where did you meet?

THE WITNESS: I believe that we met either at my office or at the Merriot.

Q What is the Merriot?

A The Merriot is a hotel in New Jersey.

Q All right.

A I told him that I was having difficulty selling 100,000 shares, that the best I could sell is 50 per cent of it, or 50,000 shares. The market conditions were getting poor, and I was not in a position to put together an adequate selling group.

He asked me about Orvis Brothers and I told him that Orvis will be doing the bulk of the 50,000 shares. He asked me about Carlton-Cambrige and I said they were having difficulty in New Jersey selling the issue.

At this conversation Mr. Feinberg got upset when I told him I couldn't sell the 100,000 shares.

MR. SEIDMAN: If your Honor please, I object to --

THE COURT: I sustain the objection.

Please don't describe your estimate of his behavior. Just tell us objective things like what he said.

A He told me he would not make available for me a loan of $250,000 if I didn't sell the 100,000 shares. I told him, "I think we should forget about selling the issue, because it is impossible in my opinion to sell the 100,000 shares and if I tell you I can sell it and I don't sell it I am kidding you."

We talked about it. He stated to me that, "If you could guarantee me to sell 50,000 shares of stock, I will arrange to sell the balance of the 50,000 shares of stock," and I asked him how he would do this.

He stated that he would use the proceeds of the underwriting to sell the 50,000 shares of stock. I said, "Well, what would the provedure be," and he said that he wanted me to issue a check for approximately $500,000 and deposit this check -- deliver the check at the closing, and then he would make the check good from the proceeds of the closing.

Initially I said no, but then I decided to go ahead with it, and I agreed to issue a check for approximately

① Did he get $ per share. 82a
② Did he report in income tax return

$500,000 for the different proportion that Orvis and Cambrige were --

THE COURT: Will you repeat that?

THE WITNESS: I agreed to issue a check for the differences of what Carlton-Cambrige and Orvis Brothers were going to sell.

THE COURT: To make up --

THE WITNESS: The total of 100,000 shares.

Q In other words, Mr. Netelkos, were you going to deliver a certain amount of cash at the closing or collections for a certain amount of money at the closing.

MR. SEIDMAN: If your Honor please, I object to that question.

MR. WILSON: I am just trying to clarify that last point, your Honor. I can leave it.

THE COURT: I will sustain the objection. See if you can put it in a different way. I sustain the objection.

Q Would you spell out in as much detail as you can, Mr. Netelkos, just what that transaction was going to be?

A At that time, Orvis Brothers committed to sell 40,000 shares of stock. I got a commitment from Carlton-Cambrige to sell 5,000 shares of stock, making it 45,000 shares. That meant to sell the balance of the stock I

Did he ask for it at the closing for a check exchange.

$550,000 Bank check

had to issue a check for $550,000.

THE COURT: That is, $10 a share for $550,000.

THE WITNESS: That is correct. And the total of 100,000 shares at 10 dollars a share represented a million dollars. So Carlton-Cambrige were going to sell $450,000 and I was supposed to issue my check up to a million dollars for 100,000 shares.

Q And what was to happen to your check?

A My check was to be made good from the proceeds of the "selling stockholders", which would be Ira Feinberg.

THE COURT: What do you mean by "made good"?

THE WITNESS: When I issued the check I didn't have sufficient funds in my account to cover $550,000, and I had to rely on Mr. Feinberg to deliver to the account sufficient funds to cover the check.

THE COURT: To the account from which your check was drawn.

THE WITNESS: That is correct.

Q Did you have any discussion at that time as to how that was going to be done?

A Yes.

Q Will you tell us what that discussion was?

A I asked Mr. Feinberg that since the issue is an all or none, that all the money had to go into the escrow

account. How he would be able to release funds prior to all the checks clearing, to issue a check for that amount of money, to make my check good, and he said, "That's been taken care of. The attorney will satisfy that problem. He will write some sort of an opinion."

Q Who is that attorney? Did he mention his name?

A Mr. Eszrine.

Q Now, after this meeting with Mr. Feinberg, what if anything did you do with Orvis Brothers?

A Based on his representation to me that I would get a loan of $250,000 if I would issue now a check to -- for the 100,000 -- to cover the total of 100,000 shares, I made -- signed a commitment with Orvis Brothers to invest $500,000, and I issued my own check which I had funds for, for "$250,000" which I gave to Orvis Brothers. Where did the #250,000 for Orvis come from?

Q On what date did you give that check to Orvis Brothers?

A I signed the agreement and I issued the check on February 13th.

Q 1970?

A Yes.

Q And as a result of issuing that check and signing that position, what was to be your position at Orvis Brothers?

Deal with Orvis Closes Feb 13, 1974

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A Senior partner of Orvis Brothers.

Q Now, did anything have to be done before you could attain that position?

A I had to qualify with the New York Stock Exchange and I had to submit financial statements, character references and related checks on my person, prior to qualifying as an allied member.

Q And were you ever approved by the Stock Exchange?

A No. Orvis Brothers went out of business prior to my being approved by the New York Stock Exchange.

Q Now, during this period while you were at Orvis Brothers, were you active?

A Yes, I was.

Q Even though you had not been approved as a member?

A That is correct. I was a member of the executive committee and in an advisory capacity at Orvis Brothers.

Q Now, let me draw your attention to February 19, 1970.

Did you meet with Mr. Feinberg again?

A Yes.

Q Where did you meet with him?

A I met him very late at night at the Merriot Hotel.

Q Now, was anyone present beside the two of you?

A It was just myself and Mr. Feinberg.

Q And what happened on that night?

A Mr. Feinberg stated to me that he is having difficulty closing the issue, he is going to fall short by approximately 42,000 shares and that he wanted me to issue another check for $425,000 to cover the shortage of shares that were offered to the public. I initially reacted by saying that I won't do it and then he said that I won't get the "$250,000 loan" from -- that he committed to me.

I finally consented, and I -- I had to, I made a check issued to Manor Nursing for $450,000. I asked Mr. Feinberg how he would make this check good, and he told me that he would do it from the proceeds of the underwriting.

THE COURT: The same way as the other one?

THE WITNESS: The same procedure as the other check.

I also then stated, "Would you have any problem with the escrow at the bank." He says, "No, that's been taken care of. You won't have any problem with the escrow account."

Q Did he tell you which proceeds of the underwriting this last check would be covered from?

A On both occasions he said the proceeds from the underwriting, from what was being collected from the public.

Q Did he tell you anything as to -- what else was said. What else if anything was said?

MR. SEIDMAN: All right.

A Well, he scheduled a closing. He told me that he was scheduling a closing for February 20th.

THE COURT: That was the next day?

THE WITNESS: That was the next day.

A And he wanted to know if everything was set for the amount of shares that were taken down by Carlton-Cambrige and Orvis Brothers. I said, "Yes, it is all set."

I told him that I had to -- if he wants to do the additional 42,000 shares I am going to have a consent signed by Carlton-Cambrige to sell -- to sign an agreement to sell the additional shares.

Q Now, on the next day, Mr. Netelkos, on the morning of February 20th, what did you do?

A I went to the bank.

Q What bank is that?

A National Community Bank. And I signed a note for $250,000, and I received a bank check for $250,000.

Q I show you what has been marked as Government's Exhibit 12. Can you tell us what that is?

A This is the note that I executed on February 20th for $250,000.

Q And who is the note payable to?

A It is payable to Ira Feinberg at National Community Bank.

Q And is your signature on that document?

A Yes, it is.

MR. WILSON: The Government offers it into evidence.

MR. SEIDMAN: No problem. No objection.

THE COURT: All right. It will be received in evidence.

(Government's Exhibit 12 for identification received in evidence.)

THE COURT: May I see it when it is marked?

Mr. Netelkos, I am not quite clear how the transaction worked. Did you sign this note at the bank?

THE WITNESS: Correct.

THE COURT: This note is payable to Mr. Feinberg?

THE WITNESS: Right.

THE COURT: And you say that on the basis of this note you were given a bank check for $250,000?

THE WITNESS: That is correct.

THE COURT: To whom was the bank check payable?

THE WITNESS: The bank check was payable to Christos Netelkos.

THE COURT: Well, and to whom did you deliver this

Check for $50,000

note?

THE WITNESS: I gave it to Mr. Bayliss. The lending officer at the bank. He gave me the note. I executed it.

THE COURT: Did you have an understanding with the bank as to what the terms of the transaction were?

THE WITNESS: Mr. Feinberg worked out the transaction with the bank. I only called the bank to confirm that I was getting the loan. They said I was getting it.

THE COURT: And all you know is that they accepted the note from him in this amount and issued the check.

THE WITNESS: That's right.

Q You did get a check for $50,000?

A Yes, sir. I received a bank check.

Q And what did you do with it?

A I immediately deposited the check to cover a check that I issued to Orvis Brothers.

Q And you deposited it where?

A At Peoples Trust Company.

Q Is that your own bank?

A Yes.

Q Then what did you do after you made that deposit?

A I went to New York, and Ipicked up a bank check

from Orvis Brothers for $450,000, and I went to Carlton-Cambrige, and I went to their bank and deposited the $400,000 check and had Carlton-Cambrige issue a new check for $400,000 plus $50,000 for what they were buying, for $450,000. I took that check with me to the closing.

Q How much was the check you got from Orvis Brothers?

A $400,000.

Q And how much was the check that Carlton-Cambrige made out?

A $450,000.

Q And you took that to the bank and had the bank issue its own check?

A That's right. An official bank check.

Q For $450,000?

A Yes.

Q I show you Government's Exhibit 13 and I ask you if this is the $450,000 bank check that was issued at that time?

A Yes. This is the bank check.

MR. WILSON: Government offers it into evidence.

Q That is a copy of it, isn't it, Mr. Netelkos?

A Yes, it is.

MR. SEIDMAN: No objection.

THE COURT: All right. It is received in

evidence.

(Government's Exhibit 13 for identification received in evidence.)

THE COURT: I see this check is made payable to Charles M. Gamarikian -- is that the correct pronounciation?

THE WITNESS: Yes.

THE COURT: As agent for Carlton.

Can you explain to us how the check happened to be payable to that person and how it was used?

THE WITNESS: Yes. Charles Gamarikian is the president of Carlton-Cambrige and he acted as the official agent at the closing for Carlton-Cambrige, since the funds that were collected were customer funds.

Q Keep your voice up, please, Mr. Netelkos. Some of the jurors back here can't hear you.

And you went to the closing that day, is that right?

A Yes, I did.

Q And where was that closing?

A It was at the National Community Bank.

Q And where was that?

A In Maywood.

Q Maywood, New Jersey?

A Yes.

Q And whom do you recall being present at this closing?

A There was Mr. Gamarikian, the president of Carlton-Cambrige, Mr. Ezrine, the attorney for the issuer, Mr. Ira Feinberg, two bank officials.

Q What are their names?

A One of them was Mr. Bayliss. The other one was a representative from the trust department.

Q The trust department?

A The trust transfer department, transferring of securities. There was people going in and out, delivering checks, clerical people at the bank, and the underwriter, Benjamin Werner and his counsel.

Q Keep your voice up.

A And there was another gentleman in the room; I don't recall his name right now.

Q Do you see anyone in this courtroom, other than Mr. Feinberg, whom you saw at the closing?

A Yes. This gentleman right here.

MR. WILSON: Indicating Joseph Delmonico.

Q Mr. Netelkos, please, your voice fades and it doesn't go up very much even when I ask you.

A This gentleman over here.

Q What kind of a place at the bank did this

closing occur in?

A It was on the top floor, and it was a glass office, very large, with a round table, and it was fairly modern.

Q Mr. Netelkos, I show you what has been marked Government's Exhibit 14 and 15. Can you tell us what they are?

A Yes. These are the two checks that I issued, one for $425,000 and one for $407,500.

THE COURT: The two checks that you issued. When and to whom?

THE WITNESS: These were the two checks that were issued as part of my understanding with Mr. Feinberg.

THE COURT: Whom did you issue them to?

THE WITNESS: These checks were issued to Manor Nursing Centres and made part of the issue checks for the closing.

Q Whom did you give them to?

A I gave them either to Mr. Feinberg or they were given to one of the clerks that were counting up the securities -- counting up the total of the checks.

Q The checks are signed by a Mr.--

MR. WILSON: Withdrawn.

The Government offers them in evidence.

MR. SEIDMAN: No objection.

THE COURT: All right. They are received.

(Government's Exhibit 14 and 15 for identification received in evidence.)

xx

THE COURT: A little earlier you testified about $450,000, a $450,000 bank check that you got from Cambrige, which I call CC in my notes. And now you tell us that you delivered these two checks, for $407,500 and a check for $425,000, Government's Exhibits 14 and 15, at the closing. I'm not clear as to what you did with the $450,000 check.

THE WITNESS: The bank check?

THE COURT: Yes.

THE WITNESS: That was also submitted as part of the checks issued at the closing.

THE COURT: You delivered three checks at the closing or is it more?

THE WITNESS: No, three checks.

THE COURT: Government's Exhibits 14 and 15 and also Government's Exhibit 13, which is the last check?

THE WITNESS: The Government's Exhibit for $450,000, the last check was delivered by Mr. Gamarikian, president of Carlton-Cambrige.

THE COURT: He gave it to you?

THE WITNESS: No, he gave it to me and I turned it over at the closing.

THE COURT: All right. Thank you.

Q Mr. Netelkos, both Government's Exhibit 14 and 15, both of the checks are signed by a John A. Cotello and not by you?

A Yes.

Q How did Mr. Cotello come to sign the checks?

MR.SEIDMAN: I object to the form of the question.

THE COURT: Ask who he was.

Q Who was Mr. Cotello?

A Mr. Cotello was an employee of the corporation.

THE COURT: Which corporation?

THE WITNESS: Upton Corporation.

THE COURT: What connection did Upton Corporation have with this transaction?

THE WITNESS: Upton Corporation is the corporation which issued these two other checks. National Transfer Company was a subsidiary of the other corporation.

Q And what was your connection with Upton Corporation?

A I was president of Upton Corporation.

Q And Mr. Cotello?

A He was employed as an assistant officer.

Q And did you have a conversation with him with

respect to these checks?

A Yes, I told him to sign the checks and put them in an envelope.

Q Would you tell the jury in general terms what happened at the close. What was done, what things were done?

MR. SEIDMAN: I object to the form of the question, your Honor.

THE COURT: I don't think you can tell us in general terms. Just tell all you recall about the closing, in chronological order.

THE WITNESS: When I arrived at the closing, most of the people were there.

THE COURT: About what time of day was this, Mr. Netelkos?

THE WITNESS: It was around 1:00 o'clock or 1:30. It was in the afternoon, after lunch.

THE COURT: All right.

THE WITNESS: They were starting to count the dollars, the checks. They had an adding machine in the office, in this conference room where we were, and they were starting to tally up the checks. I presented my two checks -- three checks including the check from Mr. Gamarikian, the check for $450,000, the bank check.

Supplemental Agreement for 42,500 shares

97a

Q Do you know what it is?

THE COURT: Overruled.

A Yes.

THE COURT: He has a right to ask that question.

Q What is it?

A This is the document relating to the 42,500 shares that was agreedto by myself and Mr. Feinberg the night before. Lawyers.

THE COURT: That is not very helpful to say "this is the document." What document?

THE WITNESS: This is a supplement to the underwriting agreement between Benjamin Werner, Carlton-Cambridge and Manor Nursing Centres.

THE COURT: Okay.

Q Is this the subject of the conversation that you said you were having with Mr. Caspar?

A yes. The additional 42,500 shares.

Q And are there signatures on that document?

A Yes.

Q Do you recognize any of those signatures?

A I recognize the signature of Mr. Feinberg, Mr. Ezrine, Mr. Gamarikian.

MR. WILSON: Government offers it into evidence.

MR. SEIDMAN: No objection. You can put it in.

(Government's Exhibit 17 for identification received in evidence.)

THE COURT: May I see it?

MR. WILSON: Yes, your Honor.

THE COURT: Do you know when and where this letter was prepared?

THE WITNESS: It was prepared at the bank.

THE COURT: Was it prepared during the closing?

THE WITNESS: Yes.

MR. WILSON: Your Honor, I also have an exhibit list for Mr. Netelkos. It might be helpful.

I would like to read this exhibit to the jury, your Honor.

THE COURT: All right.

(Mr. Wilson read to the jury from Government's Exhibit 17 in evidence.)

THE COURT: Ladies and gentlemen, there may be all kind of explanations you would like about these terms but there are some it seems obvious to me you should have. One has to do with the use of the word sticker, which you may not have heard before. Counsel can modify my statement if they feel it is not adequate, but I understand a sticker to be literally what its name implies, a small piece of paper that is stuck on to a prospectus on

occasion to indicate a change in the factual situation or a correction of a misstatement rather than reprinting the entire document.

Q Returning to the closing at the bank, Mr. Netelkos, did you hear any conversation --

MR. SEIDMAN: If your Honor please, I am going to object to the form of the question.

THE COURT: It sounds as if it might tend to be a leading question, Mr. Wilson. Can't you put it some other way?

Q Tell us everything you recall from the closing that you haven't told us already.

THE COURT: Let's try that.

MR. SEIDMAN: I will be very happy to, your Honor.

A Okay. After the telephone conversation with Mr. Gamarikian's attorney, Mr. Ezrine and Mr. Werner's attorney --

Q Please keep your voice up.

A --it was decided to sticker the prospectus.

THE COURT: When you say it was decided. Who was in on that discussion?

THE WITNESS: Mr. Caspar, Mr. Ezrine and the attorney for the Benjamin Werner Company.

Those three decided to sticker the prospectus.

Q What else was discussed or done?

A While -- while this was going on, while these attorneys were discussing this, Mr. Werner told Mr. Bayless, in front of Mr. Feinberg that he doesn't want any of the checks that were issued to Mr. Feinberg to be deposited in the bank that day, and he wanted the funds that were being submitted to the escrow account to be deposited first and clear.

Q Did you do anything with respect to the checks that day?

MR. SEIDMAN: If your Honor please, again I object to the form of the questions, in that they are leading the witness, and I believe very simply counsel can ask simple questions --

THE COURT: Overruled as to this question.

Q Did you do anything with respect to the checks that day other than delivering the ones you told us about?

A Other than delivering the checks I told you about?

Q Yes. Let me show you Government's Exhibit 16, and I ask you if you can identify it.

A Yes.

Q What is it?

A This is a letter that was -- that was prepared by Ivan Ezrine, February 20, 1970, relating to a discussion

with Benjamin Werner and Mr. Gamarikian and myself, that Mr. Ivan Ezrine would go with Mr. Werner to physically watch him deposit all the funds collected at the closing that date in the special escrow account at the Chemical Bank.

Q You mean deposit the checks?

A Deposit the checks, yes.

Q Do you recognize the signature at the bottom of that page?

A That is the signature of Ivan Ezrine.

MR. WILSON: Government offers 16, into evidence.

MR. SEIDMAN: I have no objection, your Honor.

THE COURT: Very good. Received in evidence.

(Government's Exhibit 16 for identification received in evidence.

xx

THE COURT: All right.

MR. WILSON: Your Honor, if I can just read that to the jury.

(Mr. Wilson read to the jury from Government's Exhibit 16.)

MR. SEIDMAN: It doesn't appear to be: The witness testified it was his signature.

MR. WILSON: It is the signature of Mr. Ezrine.

MR. SEIDMAN: Very well, your Honor.

Q Would you continue to tell us of any other conversation you had that day or anything else you did that day?

A After the closing was complete I had a discussion with Mr. Feinberg, Mr. Ezrine, Mr. Gamarikian and Mr. Werner relating to making a market in the Manor Nursing stock the next trading day. I told --

THE COURT: Will you explain to us what it means to make a market?

THE WITNESS: Okay. After a public issue has been successfully sold a market generally is established by either the underwriter or one of the selected dealers. This means that there is somebody willing to buy and sell the security that just went public, and this is established through the use of other dealers who will make a two-sided market, a buying market and a selling market.

THE COURT: All right. Do you want to go ahead and tell us now about your discussion?

A The discussion that I had was to establish the market. One of my conditions for obtaining the loan for

$250,000 that was agreed the night before the closing was it was essential to immediately establish a market in the Manor Nursing securities. This was one of my obligations. So --

THE COURT: To whom?

THE WITNESS: To Mr. Feinberg.

THE COURT: You mean you agreed with him that you would do so?

THE WITNESS: Yes.

And this part of the discussion at the end of the closing -- I was the one that was initiating most of the remarks, and I told Mr. Benjamin Werner that I would seek to establish a market the following day, trading day, at 9-3/4 and 10-1/4.

THE COURT: Will you explain the meaning of 9-3/4 and 10-1/4?

THE WITNESS: The broker who is making the market is willing to buy stock from the public at $9.75 a share and he is willing to offer it for resale at $10.25, maintaining a two-sided market, a buying market and a selling market.

I indicated that I would get at least two market makers in the following trading day, which would be Tuesday.

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Q What do you mean by market maker?

A A market maker is a wholesaling firm that the broker-dealer, that is, specializes in making markets, two-sided market in the over-the-counter securities.

Q This would be, in other words, a place where someone could come to either buy or sell stock?

A That is correct.

Q Was a market created on the next trading day?

A Yes, it was.

Q What was that next trading day?

A I believe it was the Tuesday, and the market was made at 9-3/4 -- 10-1/4.

Q Had you already done anything at Orvis Brothers with respect to Manor stock prior to February 20th?

A Yes, I was instrumental in having a report issued that is distributed as an internal piece to the account executives stating what Manor Nursing is and going over some of the highlights of the issue to induce the salesmen to sell the stock.

Q I show you what has been marked as Government Exhibit 8. Do you know what this is?

A This is the actual document that was given to each account executive, each salesman at Orvis Brothers to make him familiar with the security. This came directly

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from the Research Department at Orvis Brothers.

MR. SEIDMAN: If your Honor please --

THE COURT: It isn't necessary --

MR. WILSON: The Government offers 18.

MR. SEIDMAN: Just from the point of view that I'm an attorney, I object to that form of answer given in a courtroom, sir.

THE COURT: I don't understand that. What was objectionable, except for the latter part of it? I will tell the jury to disregard the latter part because it wasn't in response to the question. The only question --

MR. SEIDMAN: I have no objection.

MR. WILSON: Will you do me the courtesy of treating this as it is done in all cases, Mr. Seidman, with exhibits? Do you have any objection?

MR. SEIDMAN: I said I have no objection, your Honor.

MR. SCHWELLER: No objection.

*** [Government Exhibit 18 received in evidence.]

MR. WILSON: May I read this to the jury?

THE COURT: Yes.

[Mr. Wilson read from Government Exhibit 18.]

.2 MR. SEIDMAN: At this time I really seek to have the Court instruct the jury, if I might, that although

that document does speak for itself that the fact that that document has been offered into evidence and accepted by the Court, there is nothing in that document, I believe, that in any way connects the defendant individually --

THE COURT: It isn't customary for me or any other judge that I know to advise the jury of what the evidence signifies.

MR. SEIDMAN: I will withdraw it.

THE COURT: It is for the jury itself to determine when the time comes to deliberate on this case.

MR. SEIDMAN: Very well.

Q I show you what has been marked as Government Exhibits 19, 20 and 21. Can you tell us what they are?

A They are National Dairy Quotation Service pink sheets, which show the wholesalers who maintain markets in over-the-counter securities.

MR. WILSON: The Government offers 19, 20 and 21.

THE COURT: Don't you want to connect them with this case somehow or other?

Q Is there an entry in the pink sheets for Manor Nursing Centers, Inc.?

THE COURT: If so, will you indicate where it can be found?

A Yes, on Page 162 in Exhibit No. 19.

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Q What date does Government Exhibit 19 reflect?

A March 5, 1970.

THE COURT: Will you tell us the same information as to the other two?

THE WITNESS: The one dated May 25, 1970, Government Exhibit 20, is on Page 143.

Manor Nursing is not listed in this one.

THE COURT: 21.

Q Would you look more closely alphabetically, Mr. Netelkos?

THE COURT: If you find it it is all right.

A Yes, it is. Here it is. [Indicating.] It is at the bottom of the page.

THE COURT: What page is that?

THE WITNESS: Page 146.

THE COURT: What date?

THE WITNESS: August 21, 1970, Exhibit 21.

THE COURT: Thank you.

MR. WILSON: The Government offers into evidence, 19, 20 and 21.

MR. SEIDMAN: If your Honor please, unless the Court were to take judicial notice of the manner in which information is placed into those exhibits, then I would most respectfully request an opportunity to examine the

witness and determine who put the information into this pink sheet.

THE COURT: You are perfectly free to cross-examine the witness on that. I will take judicial notice of the fact both as a result of my experience as a judge and knowledge of this that it is publicly known that the pink sheets are the publicly accepted method of transmitting information of the market prices of over-the-counter stocks.

Is that what you understand the situation to be, Mr. Netelkos?

THE WITNESS: Yes, sir.

MR. SEIDMAN: What I'm interested in is for your Honor to take judicial notice of how the pink sheet or National Daily Quotation Service obtains the listing.

THE COURT: I will not take judicial notice of that because I do not have the information, but I will allow you to cross-examine on it.

MR. SEIDMAN: I believe it is important to do this.

MR. WILSON: I'll ask the questions.

THE COURT: If Mr. Seidman wants to ask the questions, I will allow him to do so.

MR. SEIDMAN: Thank you.

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BY MR. SEIDMAN:

Q You have been in this business of being an underwriter-stockbroker, registered representative for how long?

THE COURT: Would you ask the questions from back there?

MR. SEIDMAN: Yes.

THE COURT: Just ask the witness if he knows how this information is assembled.

MR. SEIDMAN: Very well.

Q Do you know the manner in which the information that is placed in the National Daily Quotation Service sheet is obtained by that service?

A Yes, I do.

Q Would you tell the Court and the jury the manner in which that is obtained?

A There are two ways it is done. One is that it is phoned into a special call number of the National Quotation Bureau. The other way is that it is on an IBM car which each wholesaler receives a copy of and that is delivered directly to the National Quotation Bureau.

Q Go ahead.

A Those are called in between the hours of 12:30 and 1:30 and they are the prices of that day. These are

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printed at night and delivered the next morning to the broker-dealers.

Q Who submits either the printed card or phones in the information?

A The trading desk of the subscribed member, the broker-dealer.

Q You mean the broker-dealer, the brokerage house; is that correct?

A That is correct.

Q And with respect to these three particular exhibits, would you tell the Court after examining them, and based upon your expertise in this area, what were the brokerage firms that submitted those quotations to the National Quotation Bureau?

THE COURT: I could understand that may be subject to cross-examination, although I'm not clear how, but I am not sure how it goes to the competence of this material as evidence.

MR. SEIDMAN: It becomes important, your Honor, in this case, as I understand it, and if I'm permitted to talk --

THE COURT: I am asking you a question. What is the basis for --

MR. SEIDMAN: The information concerning the

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Q What do you mean by stabilizing?

A They were maintaining a market at $10 a share.

THE COURT: How did they do that?

THE WITNESS: By willingness to buy stock at the prevailing price of $10 a share and offering it at $10 a share. In the course of the four days after the closing we were buying a lot of stock, and I asked Mr. Feinberg if he was responsible for the sale of securities into the market, and he said no. He emphatically said that he wasn't. Possibly somebody else.

It possibly is Mr. Ezrine who is selling the stock, and he will prove it to me, by the following week deliver to me the stocks that he is still holding in Manor Nursing that was part of the underwriting.

At that point, the -- we didn't say anything else. It was a fairly short meeting, and I went home.

Q Will you tell us in a little more detail, if you can, what conversation you had with Mr. Feinberg as to the two bounced checks?

MR. SEIDMAN: We don't know what checks we are talking about.

THE COURT: The witness did indicate that they were the checks for $425,000 and $407,000, Exhibits 14 and 15.

mprf

United States of America

vs

Ira Feinberg and Joseph Delmonico

New York, New York
November 19, 1974
10:00 a.m.

(Trial resumed.)

(In open court, jury present.)

MR. SEIDMAN: Mr. Wilson, may I have those exhibits?

MR. WILSON: Yes.

C H R I S T O S N E T E L K O S, resumed the stand and testified further as follows:

CROSS EXAMINATION

BY MR. SEIDMAN:

MR. SEIDMAN: If your Honor please, at this time I respectfully offer into evidence the grand jury testimony of Christos Netelkos.

THE COURT: I think I indicated yesterday, Mr. Seidman, that I don't believe that the grand jury testimony as a whole unit is admissible but that you and Mr. Wilson could agree on the parts that you wish to submit and if there is no agreement I will rule on the question.

MR. SEIDMAN: If your Honor please --

Q Mr. Netelkos, as a result of your not being able to raise additional funds from the Feinberg group did you fail to save your $500,000 investment together with whatever else you had invested into Orvis Brothers, as a result of that refusal?

A Orvis Brothers was liquidated after that, so I would say partially correct, but, as I eventually got a settlement -- as part of the $500,000 I received 100,000 shares of Manor Nursing securities as part of my settlement of the half a million dollars and other claims against Orvis Brothers.

Q But Orvis Brothers went under; is that correct?

A Yes, it did.

Q And you were looking to Mr. Feinberg and his group to invest in Orvis Brothers to save it, at or about the time of March or April of 1970; is that correct?

A Based on the representations that Mr. Feinberg made to me, that is correct, that he had sufficient capital to help me save Orvis Brothers, that is correct.

Q And as a result of that refusal you lost a great deal of money?

MR. WILSON: I will object to that, your Honor. As a result --

THE COURT: Yes. You are free to argue from the

facts that are in evidence and the witness has answered you that he suffered losses, but as I understand it he got something out of the liquidation; is that right?

THE WITNESS: That is correct.

THE COURT: You are free to ask him what the extent of his loss was, if you wish.

Q What was the extent of your loss?

A Excluding the 100,000 shares of Manor Nursing stock that I received back?

Q Yes.

A $550,000.

THE COURT: Well, have you valued what the Manor Nursing stock was worth to you out of the liquidation or has been, since?

THE WITNESS: Well, I returned the securities to Mr. Feinberg, so I -- I didn't place a value on those securities.

Q You also lost the two hundred fifty that you had borrowed from Mr. Feinberg; is that correct?

A I'm not including that. I'm including the $250,000 that I actually purchased in Manor Nursing stock as part of my loss. That is why I'm not putting a valuation for the securities, for the Manor Nursing securities.

Q But you were counting on Mr. Feinberg and his group to invest additional sums of money to bail you out of that situation?

A Mr. Feinberg represented to me that he had sufficient capital to put into Orvis Brothers. He misrepresented to me because --

Q You weren't counting on it; right?

A I was counting on his representation that he had the substantial resources and that Manor had substantial money.

Q Was Manor Nursing a party to that letter agreement which was Government Exhibit 32?

A No, Manor Nursing wasn't a party to it, but Mr. Feinberg led me to believe that the Manor Nursing Company had sufficient resources to make the commitment that eventually he would like to work out some kind of merger between Orvis Brothers and his nursing home.

Q A stock brokerage firm was going to buy a

nursing home?

A A liquidation into the stock brokerage firm.

Q Have you ever heard of a stock brokerage firm owning a nursing home?

MR. WILSON: Objection.

THE COURT: Sustained.

Q Did Mr. Wilson ever tell you after you changed your stories that you were going to be indicted for committing perjury before a United States Grand Jury on April 1, 1973?

THE COURT: Do you understand the question?

THE WITNESS: Yes, I do.

I believe he did.

Q Have you been indicted?

A On perjury?

THE COURT: Yes.

Q Yes.

A No, sir.

Q Did Mr. Wilson tell you you were going to be indicted for giving false information to a Federal officer where you were not under oath and when you were in his office and met with the other members of Mr. Wilson's staff?

A I subsequently told Mr. Wilson the truth, negating my original testimony.

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Q But did Mr. Wilson tell you that you would be indicted for having lied to him at four or five prior meetings with the United States Government?

A For --

Q For giving false information to a Federal officer.

A I believe Mr. Koven made that known to me and he told me to make sure that I tell Mr. Wilson the truth.

Q You are missing the point.

A I don't know for sure that he said anything like that, Mr. Wilson. I'm trying to recollect.

Q You don't remember any conversation for sure with Mr. Wilson during the 1973 and 1974 years; is that right?

A No. Relating to what, sir?

Q Relating to the fact of whether or not you would or would not be indicted for committing a perjury before the Grand Jury and lie to a Federal officer in 1973 and 1974.

THE COURT: You are mixing him up. He has already answered the first part of that and said he did remember the first part of that.

MR. SEIDMAN: I am not mixing him up. He is --

THE COURT: You are mixing them together and he answered one part of that and not the other part.

Am I correct, Mr. Netelkos, that you stated you recall the discussion with Mr. Wilson about your being indicted for perjury before the Grand Jury?

THE WITNESS: That is correct.

THE COURT: But you do not recall any conversation with him about being indicted for making a false statement to him, Mr. Wilson?

THE WITNESS: That is correct.

THE COURT: All right.

Q Isn't it your deal with Mr. Wilson that if you changed your story you would not be indicted for perjury?

A No, sir.

Q That is not your deal?

MR. WILSON: I object to the word "deal."

Q You have not even been indicted yet, have you?

THE COURT: Sustained. He has already admitted that he hasn't been indicted.

Q How many times did you go over your testimony that you are giving in court here today with Mr. Wilson?

MR. WILSON: During what period of time, your Honor?

A Prior to this trial?

Q Prior to this trial.

THE COURT: Yes.

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A I believe we went over the entire testimony one time over three meetings.

Q So you had three meetings? That is an interesting statement, one time over three meetings. You tell me what that means, one time over three meetings. Tell the jury what that means.

A From December, from the time I met Feinberg, to the time that I delivered the securities back to Feinberg, and that took almost a year, and I told the entire sequence of events and it lasted three meetings.

THE COURT: In other words, you are saying it took three meetings with Mr. Wilson to tell him all you had to say?

THE WITNESS: Yes, sir.

Q How long did the first meeting last?

MR. WILSON: Can we try to fix a time for these meetings?

Q When did the first meeting take place that you remember that you rehearsed your testimony?

MR. WILSON: Your Honor, this is ridiculous.

THE COURT: Who said anybody rehearsed the testimony?

Q Reviewed the testimony.

MR. WILSON: Maybe the jury ought to be told

document, so he asked me the question relating to the document, about the document, and asked me the question.

Q When did you tell Mr. Wilson about your prior meetings when you had lied? Did you tell him at those three meetings or prior to those three meetings?

A Yes, prior to.

Q Pardon me?

A Prior to those three meetings.

THE COURT: Prior to the last three meetings. When did you tell him; how long ago?

THE WITNESS: I would say about three to six months after the indictment, after I was indicted.

THE COURT: The indictment was in May of 1973?

THE WITNESS: Yes, that is correct.

THE COURT: You mean the summer or Fall of 1973?

THE WITNESS: That is correct. It was after Mr. --

THE COURT: In other words, a year to a year and a half ago; is that correct?

THE WITNESS: That is right. Either before Mr. Wilson got sick or just after.

Q When did you become a registered representative with either the NASD or the SEC, Mr. Netelkos, for purposes of being able to sell securities on your own

behalf or on behalf of somebody else?

A 1968.

Q When did you cease to be an individual permitted by law to sell securities?

A They withdrew my State registration when Orvis Brothers went out of the business.

Q Isn't it a fact that the National Association of Securities Dealers barred and suspended you as a broker-dealer and as a registered representative sometime in 1970?

A That is a fact, based on what I read in the newspaper, yes.

Q You weren't interested, other than what you read in the newspaper, as to why you were barred?

A No, because it just came out recently, that NASD action, and it didn't have any bearing on my current activities.

Q It didn't have any bearing on your current activities?

MR. WILSON: I object to this line.

THE COURT: I will sustain it. He admitted that he was barred and beyond that I don't see that whether he is interested or not is relevant.

Q Isn't it a fact that you were barred as a

result of your failure to keep proper books and records at the company called Carlton Cambridge in accordance with the NASD rules and regulations?

THE COURT: If you know.

A I don't know, but I understand that that is the reason. It was a normal hearing on that which I, naturally, didn't attend.

Q What do you mean you naturally didn't attend. I'm curious about that.

A The NASD had to serve these documents on myself personally and I never got service.

Q So, therefore, there was something that might affect your ability to earn a living and you weren't interested in it; is that right?

MR. WILSON: Objection.

THE COURT: Sustained.

Q If you know, was your failure to keep proper books and records, which was the foundation for your suspension by the NASD, related to matters other than the Manor Nursing Home issue?

A I don't know.

Q After the collapse of Orvis Brothers, when did Carlton Cambridge go out of business?

A I don't believe Carlton Cambridge ever went out of

business.

Q Did it cease to do business?

THE COURT: Or is it still in business? Is that what you are saying?

THE WITNESS: It is in business, but it is not as a broker-dealer.

Q Is that because its permit or license for permission to do business as a broker-dealer in the stock market was revoked? Is that correct?

A Technically it is not correct.

THE COURT: Let me ask you this: When did you sever your connections with Carlton Cambridge?

THE WITNESS: December 1969.

THE COURT: Have you personal knowledge of its affairs since that time?

THE WITNESS: No, because I read in the newspaper--

THE COURT: I am not interested in what you read in the newspaper. When I ask you a question I really mean what I ask. Have you any personal knowledge?

THE WITNESS: No, sir.

THE COURT: I don't see how you can testify about it.

Q Did you then become affiliated after your suspension with a company called Christian Paine Brokerage?

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MR. WILSON: Objection.

THE COURT: Please read the question.

[Question read.]

A What do you mean by affiliated?

Q I mean --

THE COURT: Can't you tell when I have a question read back that I am considering the question?

MR. SEIDMAN: I apologize.

THE COURT: Would you please also wait, Mr. Netelkos?

I will sustain the objection. It doesn't seem to me to be related to the case.

MR. SEIDMAN: May I make an offer of proof?

THE COURT: Is it really that important?

MR. SEIDMAN: I believe it is, sir. The jury should be aware of certain facts.

THE COURT: All right.

[At the side bar.]

THE COURT: What are you trying to prove?

MR. SEIDMAN: I am trying to prove that he was suspended and that his permit or license was revoked with respect to his right to act as a registered representative in relation to the business of selling stock in 1970. I believe the facts show that despite that, and in

disrespect of the law and in violation of the law he continued to act as a stockbroker for the company Christian Paine, which is the successor in interest to a company called Carlton Cambridge.

MR. WILSON: That is exactly the kind of exploration of prior acts of misconduct which we are trying not to get into.

THE COURT: I will sustain the objection. I heard the offer of proof and I sustain the objection.

[In open court.]

Q During the period beginning the first time that you met Mr. Wilson, did you have occasion to speak to other prosecutors of the United States Government in his office and other Districts of the United States?

A Yes.

Q And in speaking to these other prosecutors, were these prosecutors looking into the manipulation, improper conduct in various other stock offerings?

A Yes.

Q And were they seeking your personal knowledge and involvement concerning these other stock offerings?

A You state they were seeking my personal knowledge, if there was an involvement.

Q Are you asking me a question now?

A I am giving you my answer. You got to be more --

THE COURT: They wanted to know what you knew about certain things?

THE WITNESS: Yes, and I told them.

Q They wanted to know what involvement you had in it?

A If any, yes, and I answered yes or no.

Q Pardon?

A Yes.

THE COURT: They wanted to know his involvement, if there was any.

In other words, you were involved in each situation you were asked about?

THE WITNESS: I was involved, but not related with the manipulation.

Q Did you testify before a United States Grand Jury in a matter involving Orvis Brothers?

A Yes.

Q And did you meet with the United States Attorney concerning what testimony you could give in the Orvis Brothers indictment after you met with Mr. Wilson?

A I didn't meet with Mr. Wilson.

Q I know. After you met with Mr. Wilson.

A After I met Mr. Wilson?

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Exchange Commission in an investigation --

MR. WILSON: Objection.

THE COURT: Sustained. May I see counsel, please.

(In the robing room.)

THE COURT: Mr. Seidman indicates he is finished with that line of questioning.

MR. SEIDMAN: As to the facts.

THE COURT: Yes. I was going to state that I think you had come to the point where you are dealing with extraneous trivia. You have already established that this man is a forger, a cheat, a liar and a perjuror, and I don't think that the paraphernalia that you are dealing with warrant the time that has been devoted to them this morning. Indeed I believe, and I think it is a just ruling, that since you have corroborated Mr. Netelkos' information, as I recall, approximately two full days of trial time, whereas his direct testimony I think [illegible] at the most a couple of hours, I am instructing that you complete your examination by the luncheon recess, and earlier if possible.

MR. SEIDMAN: I will do so, your Honor.

MR. SCHWELLER: Your Honor, while we are at the -- go ahead.

THE COURT: I sustained the objection. What is the relevance?

MR. SEIDMAN: He has told a story, your Honor, about the $250,000 --

THE COURT: He has testified --

MR. SEIDMAN: He has testified concerning --

THE COURT: And you say this letter is inconsistent.

MR. SEIDMAN: Yes.

THE COURT: Let me see if I agree with you. Let me see the letter.

MR. SEIDMAN: Very well, your Honor.

THE COURT: I will allow it in evidence. I will also allow redirect examination as to what the words mean and I will explain to Mr. Wilson at the side bar why.

(At the side bar.)

THE COURT: Since the letter states, "In reference to our phone conversation of the prior week whereby I indicated to you that I would prepare an analysis as to how I intend to repay the remaining balance of the $250,000 which I personally borrowed from your institution."

MR. WILSON: Okay.

THE COURT: Give it to the clerk.

(Defendants' Exhibit E for identification received in evidence.)

4 mpar

THE COURT: I don't think I am going to be able to accomodate him.

MR. WILSON: If there is any possibility of a medical problem, he ought to be examined by Court-appointed doctors.

THE COURT: That is what I will do.

[In open court, jury embarks.]

THE COURT: Mr. Hoskins?

MR. HOSKINS: The Government calls Harry Pieratos.

H A R R Y P I E R A T O S , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOSKINS:

THE COURT: Mr. Pieratos, will you keep up your voice so all the people in the courtroom can hear you, particularly those in the jury in the back of the room, at the far end.

MR. SCHWELLER: May I be heard before this commences?

I haven't received any 3500 material relating to this witness. I don't know if there was any --

MR. WILSON: I am sorry. It was turned over to

$20,000, "Therefore, we expect you to invest a minimum of $10,000".

I told him that's not possible, since I had the expansion, and then he said to me that, "We are going to buy the Teaneck Nursing Home in Teaneck; we are also going to build a nursing home in River Edge and one in Emerson, and also we are going to put another nursing home in Riverdale, New York."

Well, I told -- and he said to me that -- Mr. Feinberg said to me, "Well, you can see how much business you will be getting from us. Therefore, you ought to invest."

I did protest again. I said, "No, I don't think I will, but let me think."

Then he left again.

Q Did there come a time once again when Mr. Feinberg came to your office, subsequent to that?

A Yes. He came in three weeks later, I believe.

Q And at this occasion was it just you and Mr. Feinberg?

A Again.

Q And what was said at this time?

A He said, have I made up my mind to invest in the Tenafly Manor? I said to him, to Mr. Feinberg, "Do you

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have any documents that you are purchasing this -- these new homes or building these new homes?"

He said, "No. You have to take my word for it."

I said, "Well, I don't have the money."

Then he said to me -- Mr. Feinberg -- "How much do we owe you?"

I said, "I don't know. Approximately $2,000, give or take, something like that."

He says to me, "Well, we are going to invest this money to buy you two hundred shares."

At that time I said to him, "Well, I might as well. I am not going to get it, anyhow."

And that was it.

Q Following that meeting, when did you next hear from Mr. Feinberg?

A Well, the next time I heard from Mr. Feinberg was a month or so later. He called me to tell me that the meeting of the stockholders -- there was a meeting of the stockholders or the stock purchaser people of the Tenafly Manor, they have some drinks, something to eat, and he would like me to go on over and meet them and make the purchase.

Q Did you go over?

A Yes; I did.

Q Approximately how many people were there?

A Well, five or six people, I would say, were there. I was introduced to them very briefly. I did not recognize any of them. And I sat there for awhile, and then Mr. Feinberg left the room with his secretary. He came back a few minutes later. He gets a telephone call, and he called a name which I don't remember -- I cannot recall -- and --

Q You mean, as he was talking on the phone?

A As he was talking on the phone. And he said, "You better get down here in half an hour. That's all I can hold the stock: a half hour. The stock goes like hot cakes. That's all I can hold the stock."

And then he turned around and said to me, "You see how fast it goes. Buy more."

I said, "No; I am not going to."

And he left the office, and he came back with a number of checks -- with a number of checks, and he asked me to go and sign them.

THE COURT: What did he ask you to sign?

THE WITNESS: Three or four checks he brought over to me.

A [continuing] Now, I can't recall where I signed them, whether it was in that room or whether it was across

the hall, in the business office.

Q In which room?

A The room where all the people were there, or whether it was the room across the hall, where his business office was, because it's just a short distance, just across.

Q In any case, what happened there?

A I signed a number of checks that he presented to me, which were made to the Englewood Laboratories.

Q When you signed them, you mean you endorsed them?

A Endorsed them, yes. That's what I mean.

Q You mean --

THE COURT: You mean, on the back?

THE WITNESS: Yes. That's what I mean.

Q I show you Government's Exhibit 37. Tell us, please, if you can, what they are.

A They are the checks which I endorsed that night. And I notice also that these checks were made to the old address. These checks were made, some of them --

THE COURT: All we want to know at this time is what they are. They are the checks that you endorsed at that time?

THE WITNESS: Yes.

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Q The checks you testified about?

A Yes.

MR. HOSKINS: Government offers Government Exhibit 37.

MR. SEIDMAN: No objection.

THE COURT: All right.

MR. SCHWELLER: No objection.

***

[Government Exhibit 37 for identification was received in evidence.]

MR. HOSKINS: There are six checks, your Honor.

Q Mr. Pieratos, handing you again Government Exhibit 37, there are six checks, are there not?

A Yes.

Q Can you tell from looking at the amounts of those six checks what the amounts represent?

A I would say they represent the amount which I have paid for the stock for the two hundred shares.

Q I show you Government Exhibit 38 and ask you if you can identify that.

A Yes, this is the agreement for purchasing the stock.

Q Does your signature appear on there?

A Yes.

Q When did you sign it?

A I cannot recall.

Q Do you recall if it was in relation to the signing of these checks, when you did sign it?

A I don't remember when it was signed.

THE COURT: Let me ask you this: Can you recall whether you signed that agreement before you received the checks, at the same time that you received the checks or after you received the checks?

THE WITNESS: Your Honor --

THE COURT: You can't remember?

THE WITNESS: I can't remember. I remember signing the checks, but I don't remember when I signed this.

Q You do remember signing that?

A I do.

THE COURT: Do you remember where you signed it?

THE WITNESS: No, sir, I don't. I do not remember.

MR. HOSKINS: The Government offers 38.

MR. SEIDMAN: No objection.

MR. SCHWELLER: No objection.

[Government Exhibit 38 received in evidence.]

THE COURT: May I see it?

MR. HOSKINS: Yes. I'm sorry.

THE COURT: I don't want to see every exhibit, but some I do.

Q Mr. Pieratos, going back to the conversation, the third conversation that you had with Mr. Feinberg, that is, the third time he came to your office, do you recall that conversation?

A Previous to the purchasing of this stock?

Q Yes, that is right, previous to the time you actually went to Manor of Tenafly.

A The conversation was that I should invest in stock of Tenafly Manor.

Q Let me just ask you --

MR. SEIDMAN: That is the witness' recollection.

THE COURT: I think that the question was

whether he remembered the conversation, not what the substance of it was.

THE COURT: Did you want to ask him what the substance of it was, Mr. Hoskins?

MR. HOSKINS: No, your Honor. I have another question.

Q Do you recall whether there was any conversation between you and Mr. Feinberg relating to --

MR. SEIDMAN: I am going to object to that.

THE COURT: I will sustain the objection on the ground that it was leading, unless it is very general.

MR. HOSKINS: Let me rephrase it.

Q Do you remember anything else which you and Mr. Feinberg discussed, anything else which Mr. Feinberg said to you or you said to him in the course of that conversation?

A Well, as far as I can remember, he said I have to invest the money if I want the business in what he is having now, the Tenafly Manor, and also the new business, the new homes he is going to get.

THE COURT: If I understand you correctly, you mean he told you you had to invest if you wish to keep the business you had or get any new business?

THE WITNESS: That is very correct. I was also asked I should hold the stock when I purchased for six

months.

Q When were you asked that? When were you told that?

A In my office.

Q At that third meeting?

A The third meeting, that is right.

Q You were told that by Mr. Feinberg?

A That I should hold the stock.

MR. SEIDMAN: I object to that, your Honor.

THE COURT: Overruled.

MR. SEIDMAN: If Mr. Hoskins wants to take the stand, he can testify.

THE COURT: So can you, Mr. Seidman.

MR. HOSKINS: Your witness.

***

CROSS-EXAMINATION

BY MR. SEIDMAN:

MR. SEIDMAN: Can I have those exhibits.

MR. HOSKINS: Yes.

Q Mr. Pieratos, my name is Irving Seidman. Have you ever spoken to me before?

A No, sir.

Q How many times did you speak to the United States Attorney in this matter?

A About three times.

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THE COURT: I do direct you to keep your voice down, Mr. Seidman, and I direct you not to make any comments and I direct all counsel not to make any comments about the testimony of any witness other than to ask him the questions that are appropriate.

MR. SEIDMAN: I wish the record to show that I didn't make the comments that counsel already indicated.

[In open court:]

2.2pm

J A C K N A I M A N , called as a witness in behalf of the Government, after having been duly sworn, testified as follows:

***

DIRECT EXAMINATION

BY MR. WILSON:

Q How are you employed, Mr. Naiman?

A I'm a broker. I work for Formetal, Inc., Jenkentown, Pennsylvania.

Q Keep your voice up, please, sir.

A Yes, sir.

Q Mr. Naiman, you have plead guilty to your participation in the public offering of Manor Nursing Centers stock as charged in the conspiracy count of the indictment now on trial; is that right?

MR. SEIDMAN: If your Honor please, I object to the form of the question. He has plead guilty to Count 1.

MR. WILSON: As charged in the conspiracy count of the indictment was the last part of my question, Count 1.

THE COURT: The objection is overruled. Please be seated.

A Yes, sir.

Q Have you been sentenced yet?

A No, sir.

Q When will you be sentenced?

A At the conclusion of this trial there will be the sentencing of all defendants who have been found guilty.

Q Who is going to sentence you?

A Judge Lasker.

Q Do you know Joseph Delmonico?

A Yes, I do.

Q Would you indicate where he is seated?

A Mr. Delmonico, he is in the corner chair. [Indicating.]

MR. WILSON: May the record reflect the identification has been made?

THE COURT: Yes.

Q What year did you first meet Joseph Delmonico?

A 1966.

Q What were you doing at that time? Where were you working?

A I was employed by Columbia Resources at 80 Wall Street, New York City.

Q What kind of business did Columbia Resources conduct?

A They were in the finance business financing real estate and other ventures.

Q How many people were working at Columbia Resources?

A Six or seven.

Q Did Joseph Delmonico do any business with you while you were at Columbia Resources?

A With me, Joseph Delmonico had business, yes, sir.

Q What was that business?

A We were indebted to someone --

MR. SCHWELLER: Will the witness please explain the word, "we"?

THE COURT: Whom do you mean by "we"?

THE WITNESS: Principals of Columbia Resources.

THE COURT: Why don't you use their names. Columbia Resources was indebted; is that right?

THE WITNESS: No, it was a principal of Columbia Resources and me.

THE COURT: Who was the other principal?

THE WITNESS: Anthony Delyra and I were indebted to someone known to Mr. Delmonico. Mr. Delmonico was

collecting for that person.

MR. SCHWELLER: I am going to object to that answer.

THE COURT: Just a minute. On what ground?

MR. SCHWELLER: How does he know that Mr. Delmonico was collecting?

THE COURT: How do you know?

THE WITNESS: I met Mr. Delmonico. He was introduced to me by the man to whom I owed the money as someone who would go with me --

MR. SCHWELLER: Before the witness answers, I have a further objection. I don't see the relevance of all of this material to this case. It is not in issue here and there is no relevance or materiality.

THE COURT: I have reasons we discussed in the robing room for believing that a certain amount of background is relevant. I will allow it.

MR. SCHWELLER: The reasons we discussed in the robing room concerned his long criminal record, which was to be brought out.

THE COURT: Mr. Schweller, why do you think I did not describe the material we talked about in the robing room? I know the material as well as you do. If you want further discussion I will be glad to discuss

THE COURT: Mr. Wilson, why can't you get --

MR. WILSON: The answer is a simple one: Once we are talking about what kind of man is Joseph Delmonico, that he is not the laborer and blue collar worker that Mr. Schweller described him to be, and that he went to Cleveland and Indianapolis and the Bahamas with Mr. Naiman, and I am trying to show that he has been involved in business dealings for a long period of time.

THE COURT: All right.

MR. SEIDMAN: May I respectfully --

THE COURT: Mr. Seidman, I am going to hold you in contempt if you comment on this.

MR. SEIDMAN: Yes. I will respect your Honor's admonition.

[In open court:]

Q Mr. Naiman, will you tell us what, if anything, you did with Mr. Delmonico?

A Mr. Delmonico accompanied me on trips to Cleveland, Indianapolis and Freeport in the Bahamas where I conducted business for Columbia Resources and paid to Mr. Delmonico for the account of the man that I owed the money to sums as I received them.

2.3pm Q Mr. Naiman, what happened to the people who were working at Columbia Resources?

A They were all indicted and subsequently convicted for fraud, wire fraud and --

Q What happened to you personally?

A I received a jail sentence of six months.

THE COURT: For what?

Q Did you plead or did you go to trial?

A I plead guilty.

THE COURT: To what crime?

THE WITNESS: Fraud by wire.

Q Now, Mr. Naiman, after this time that you were with Columbia Resources, when did you next meet Mr. Delmonico

THE COURT: By the way, when were the events you just described?

THE WITNESS: 1967.

THE COURT: All right.

THE WITNESS: In 1969, to the best of my recollection.

THE COURT: What part of the year, if you can recall?

THE WITNESS: In the Fall, early Fall.

THE COURT: All right.

Q Where did you meet him?

A In Philadelphia.

Q What were you doing at that time?

A I was employed by Allstate Bond & Mortgage Company in the general finance business.

Q Did you have a conversation with Mr. Delmonico in Philadelphia?

A Yes, I did.

Q What did you say to him and what did he say to you?

A We discussed the fact that I had been incarcerated and what happened to all of the people that were in the case with me; the fact that I did time in Allenwood, Pennsylvania.

Q What is Allenwood, Pennsylvania?

A That is the Federal Detention Headquarters, Detention Center.

Q Is that where you were in jail?

A Yes, sir.

Q Go ahead. Tell us what else was talked about.

A Mr. Delmonico asked me how I was doing financially and I told him that although I had been employed and had completed transactions, I was unhappy about the payment that I was receiving.

THE COURT: You mean the salary?

THE WITNESS: Yes, sir. Well, I was working --

THE COURT: Compensation?

THE WITNESS: Well, I was working on compensation. I told Mr. Delmonico that I was unhappy about the compensation that I was receiving. Mr. Delmonico informed me that I still had an outstanding balance that I had taken responsibility for and I suggested to Mr. Delmonico that we go in business together because we -- I would be able to earn money for both of us, and we formed a general agreement to go in business together.

Q You said something about a balance that you owed. Tell us more about that. What was said?

A Prior to Columbia Resources --

MR. SCHWELLER: I am going to object. I don't see the materiality or relevance.

THE COURT: I will sustain that objection.

Q Tell us everything that you recall that you have not yet told us about, that you said to Mr. Delmonico, if anything.

MR. SCHWELLER: I will object to that. It is just a general catch-all question to put the same words in the mouth of the witness.

THE COURT: If it is intended to elicit the information which I just --

MR. SCHWELLER: I think it exactly does that.

THE COURT: Let Mr. Wilson tell me. He knows

what his intention is. Do you expect the witness simply to testify to what I just sustained an objection to? If so, I will sustain this objection. If you are soliciting other information, I will not.

MR. WILSON: Your Honor, frankly, it is in the same area again.

THE COURT: Yes. I think we have enough of the material which I believe the Government is entitled to put in as background.

Q What did you and Mr. Delmonico do after this meeting, if anything?

A We agreed to form a company, rent offices in Philadelphia, open a bank account in Philadelphia and go in business together for -- in general financing.

Q Did you open that office?

A Yes, we did.

Q Did you open that office?

A Yes, we did.

Q Did you open a bank account?

A Yes, we did.

Q Where was that bank account?

A Central Penn National Bank in Philadelphia.

Q How many signatures were required on checks drawn at that bank?

A Two signatures.

Q Whose were they?

A Mr. Delmonico and mine.

Q Both on every check; is that right?

A Yes, sir.

Q Did you contribute any money to this business you were going into?

A No, I did not.

Q Who was supplying the money?

A Mr. Delmonico.

Q How long did you stay in Philadelphia in this business?

A Several weeks.

Q And then what did you do?

A We went to East Orange, New Jersey and opened an office there along with a --

THE COURT: Had you opened an office in Philadelphia or just established a bank account?

THE WITNESS: We opened an office, but we did not use it at that time.

THE COURT: All right.

Q You physically had an office; is that right?

A Yes, sir.

THE COURT: Then you went to East Orange?

THE WITNESS: East Orange, New Jersey.

Q What was the business called at that time?

A The Deneso Corporation of New Jersey.

Q What was the name of the corporation in Philadelphia?

A The Deneso Corporation of Pennsylvania.

Q Was that the same corporation?

A I had a problem with the Deneso Corporation of Pennsylvania and when we went to New Jersey we formed a new corporation called the Deneso Corporation of New Jersey.

Q When did you go to New Jersey?

A In the Fall of 1969.

Q Did you have any bank accounts in the name of Deneso Corporation of New Jersey?

A Yes, we did.

Q What banks were they?

A Garfield Bank & Trust Company, the Essex State Bank & Trust Company and the Midland Bank in New Jersey.

Q Did you have any power to write checks on those accounts?

A No, I did not.

Q Who did?

A Mr. Delmonico.

Q Do you know if anyone else could?

A Mr. Camarrato might have had the authority to sign along with Mr. Delmonico.

THE COURT: You say he might have. Do you know whether he did?

THE WITNESS: I don't know for certain.

MR. SCHWELLER: I will stipulate to certain facts in order to shorten things, certain obvious facts. As to those, there will be no problem.

THE COURT: Those facts are already now of record.

MR. SCHWELLER: But any future facts I will stipulate to.

Q Who was Mr. Camarrato?

A Mr. Camarrato was the owner of the building in which we had our office.

Q Did he have any connection with Deneso?

A He had connection with Deneso in that Deneso was attempting to do some financing for him.

Q Was he part of the corporation itself; that is what I mean.

A Yes.

Q In what way?

A He had one-third interest in the profits, Mr. Delmonico had a one-third interest in the profits and I had a one-third interest in the profits.

THE COURT: Does that mean each of you owned one-third of the stock?

THE WITNESS: No, it does not, sir.

THE COURT: Who did own the stock?

THE WITNESS: There wasn't any distribution of stock.

Q What was your own financial arrangements with the Denesco Corporation?

A I had a $200 a week salary from which I paid the expenses, my expenses, and one-third of the profits after deduction of the $200 that I would have had until the time there were profits.

Q Was any business conducted by the Denesco Corporation when it got to New Jersey, the Denesco Corporation of New Jersey?

A Yes.

Q What kind of a business was that?

A We attempted to finance some real estate for several clients. We made a loan on real estate, a second mortgage loan on an apartment house being constructed. We loaned money to an earth mover by the name -- whose company was Earthco Construction Company.

Q Approximately how many transactions did you work on in the whole period of time that you operated as

THE COURT: Do you know what the source of the funds was that Mr. Delmonico furnished for the borrowers?

MR. SCHWELLER: Whether they were Mr. Delmonico's funds or Denesco's.

THE COURT: First of all, does he know.

THE WITNESS: I'm not certain.

THE COURT: All right, if you are not certain.

Q Did you ever hear of Manor Nursing Centers, Inc.?

A Yes, sir.

Q When did you first hear of Manor Nursing Centers?

A To the best of my recollection, the end of December in 1969.

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Q And how did you hear about it?

A I received a telephone call from a banker in Mobile, Alabama, by the name of Jamison.

Q And after that telephone call, what happened next?

A I either contacted or was contacted by Mr. Ezrine.

Q You received a telephone call?

A Yes, sir.

Q And after that telephone call, did you have a meeting about Manor Nursing Centres, Inc.?

A Yes, we -- yes, I did.

Q And where was that meeting?

A In our offices in East Orange.

Q And when did that meeting take place?

A In January of 1970, to the best of my recollection.

Q Who was present at that meeting?

A Mr. Delmonico, Mr. Camarrato, Mr. Hilowitz, Mr. Feinberg, Mr. Ezrine and Mr. Weiner.

Q Who is Mr. Hilowitz?

A Mr. Hilowitz was the attorney for Deneso Corporation.

Q Were all of the persons present at the entire meeting?

A No, Mr. Camarata and Mr. Hilowitz excused themselves shortly after the introductions.

Q Now Mr. Naiman, sit back and tell us everything that was said at that meeting, by whoever said it.

MR. SEIDMAN: If there was such a conversation, your Honor.

THE COURT: Overruled. I can't imagine six people sitting silent in a room.

MR. SEIDMAN: I'm not suggesting that, but it may have been that one or two or three --

THE COURT: If nothing was said, nothing should be reported. What the witness was asked was to report is what was said. Now, please don't --

MR. SEIDMAN: By everybody in that room.

THE COURT: Mr. Witness, please don't report to us anything that was not said.

MR. SEIDMAN: Mr. Wilson suggested that everyone spoke at that meeting.

THE COURT: He didn't.

MR. SEIDMAN: That's my impression of the record.

THE COURT: Will you please report what was said at the meeting.

MR. SEIDMAN: And by whom, your Honor.

THE COURT: And by whom.

MR. SEIDMAN: If he remembers, your Honor.

THE WITNESS: To the best of my recollection, we

all introduced each other to one another. I had never met Mr. Ezrine, Mr. Feinberg or Mr. Weiner before.

THE COURT: Either Werner or Weiner?

THE WITNESS: Weiner. Pardon me.

A Mr. Ezrine was introduced as the attorney for Manor Nursing Home and for Glendale. Mr. Weiner was introduced as the accountant for the firm, and Mr. Feinberg for the operator of Manor Nursing Home in Tenafly.

I introduced myself and I introduced Mr. Delmonico and I introduced Mr. Camarrato, and I introduced Mr. Hilowitz, and Mr. Ezrine then gave several of the Manor Nursing prospectuses to me and, to the best of my recollection, Mr. Hilowitz, Mr. Camarata and Mr. Delmonico.

THE COURT: Mr. Ezrine gave you that prospectus?

THE WITNESS: Yes.

MR. SCHWELLER: Your Honor, when he says to the best of his recollection, does he recall who--

THE COURT I will allow you to bring that out on cross examination. It's a common statement of a witness.

MR. SCHWELLER: All right.

THE COURT: You just finished telling us that Mr. Ezrine gave out prospectuses to various people.

THE WITNESS: Yes.

A I looked at the prospectus. Mr. Feinberg discussed

the operation of Manor Nursing Home and his --

MR. SEIDMAN: If your Honor please, that's a conclusory statement. I would like to know what he remembers, if anything, of the conversation.

THE COURT: Overruled. You can ask that on cross examination.

MR. SEIDMAN: Thank you, your Honor.

A Mr. Feinberg then told of the plans for Manor Nursing Home as outlined in this prospectus for additional nursing homes. Mr. Ezrine told us of the difficulty and the reason for their being in our office, for their difficulty in concluding the offering that they had, which was an all-or-nothing offering, in which they had to sell 450,000 shares, receive $4,500,000, or return all of the money that had been subscribed as paid in to date, and told us that their plans --

MR. SEIDMAN: Is he still referring to Ezrine, your Honor?

THE WITNESS: Yes. Mr. Ezrine did the discussion.

THE COURT: All right. Go ahead.

A And at this time there were 50,000 shares --

THE COURT: Are you still saying what he said?

THE WITNESS: Yes; Mr. Ezrine.

THE COURT: Go ahead.

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A Mr. Ezrine explained that there were 50,000 shares of stock which had to be subscribed and paid for prior to a complete all-or-nothing deal, and requested that Deneso Corporation purchase the 50,000 shares of stock.

MR. SCHWELLER: Your Honor, when he said "requested", requested to whom?

MR. WILSON: Your Honor, I would appreciate it if the witness were allowed to complete.

THE COURT: I am instructing both defense counsel that they will have to save their desires to refine the testimony for cross examination. The witness is entitled to give an answer, and if it is not satisfactory to the other attorneys, the purpose of cross examination is to refine the material and to bring out any inconsistencies, if there are any.

Proceed, Mr. Naiman.

A (Continuing) Mr. Ezrine explained that there were 50,000 shares not subscribed at the present time and that he requested or asked our participation, that is, the Deneso Corporation's participation in the purchase of the 50,000 shares of stock.

Within a few moments I, speaking for Deneso, said that Deneso Corporation would arrange to take down 50,000 shares of stock and pay $500,000 on terms and

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conditions which I would outline, and to receive remuneration, which I also would outline.

THE COURT: Who was to receive the remuneration?

THE WITNESS: Deneso Corporation.

A We all talked about the taking down of the stock and the fact that it was brought out repeatedly in this meeting that the subscription -- failure to have the 50,000 shares sold at the present time was due to conditions in off-shore mutual funds, that is, European --

THE COURT: Excuse me. When you say it was brought out, I agree with defense counsel that it is necessary for the witness to indicate who brought it out, if you can recall.

THE WITNESS: I can't recall. I know that Mr. Ezrine was doing most of the speaking for Manor Nursing Home, especially as it dealt with the financing.

THE COURT: All right.

THE WITNESS: Whether it was he alone, I'm not certain.

A But it was brought out that they had received verbal subscriptions for any unsold shares by mutual funds operating in Europe and that this would take -- pardon me -- several months to conclude, so that the position that Deneso was taking was stop-gap financing until this came

to pass.

MR. SEIDMAN: If your Honor please, I really believe it is important to identify the speaker in this colloquy.

THE COURT: I can't force him to.

MR. SEIDMAN: Yes, I know that; if the witness identified Mr. Ezrine as doing the speaking, I have no objection.

MR. WILSON: That's what he said.

THE WITNESS: To the best of my recollection, Mr. Ezrine did most of the speaking.

MR. SEIDMAN: Thank you.

Q Continue telling us what was discussed or said by each person at this meeting.

A To the best of my recollection, I then outlined a means by which the Deneso Corporation could effect the taking down of 50,000 shares of stock by outlining a means by which a bank could be induced to lend the necessary money for the purchase of 50,000 shares of stock.

THE COURT: Lend it to whom?

THE WITNESS: To the Deneso Corporation.

Q Tell us what you told the meeting about that?

A I suggested that we would pledge the 50,000 shares of stock that we --

MR. SEIDMAN: Who is we? I assume he means Deneso.

THE WITNESS: All right. I will try --

THE COURT: Please use names wherever possible.

THE WITNESS: Yes.

A I suggested that the Deneso Corporation would pledge the 50,000 shares of stock and would arrange for Manor Nursing Home to purchase a certificate of deposit in the amount of $350,000, bearing interest at whatever rate the current, then rate was, the then current rate was by banks issuing certificates of deposit, and opening a regular business checking account bearing no interest, in the amount of $100,000, and maintaining in this account interest-free, substantial balances and that the loan would be for one year or less and that the bank would have right of offset against the certificate of deposit.

Q What do you mean by right of offset?

MR. SCHWELLER: Your Honor, may Mr. Naiman say which bank? He says the bank; could he say more particularly --

THE WITNESS: I can answer that question easily.

THE COURT: Yes, but I don't see that that justifies an interruption, Mr. Schweller.

MR. SCHWELLER: I'm sorry, your Honor.

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Q What is the name of the bank, if you know?

A At the time of the meeting we didn't have a bank, because we hadn't even had a deal until this meeting.

THE COURT: All right.

Q What is the right of offset?

A The right of offset means that should there be a loss the certificate of deposit could be used as collateral security to pay any loss.

THE COURT: On the loan?

THE WITNESS: On the loan.

Q Was anything else said at this meeting?

A Yes, the fact that Deneso Corporation would receive approximately $100,000 for doing this transaction.

Q How was it to receive this $100,000?

A The stock came out at 10, and we were in a guaranteed position to sell for 12 within the year.

Q Was anything else said --

THE COURT: That leaves me unclear. First of all, I understand you were the one who proposed Deneso should receive $100,000, is that right?

THE WITNESS: Yes, sir.

THE COURT: And when Mr. Wilson asked you how you were going to receive $100,000 you said that the stock would come out at 10 and you were guaranteed 12.

That doesn't answer for me how you would be paid. Can you be more specific?

THE WITNESS: Well, the entire transaction was prefaced by everyone believing that the stock was going to be sold --

MR. SEIDMAN: I object to "everyone believing", your Honor.

MR. WILSON: Your Honor, I may be able to clarify it with a document.

THE COURT: All right.

MR. SEIDMAN: Is that objection sustained, your Honor?

THE COURT: The objection is sustained, yes.

Q Mr. Naiman, I show you what has been marked as Government's Exhibit 39 for identification. Can you tell us what that document is?

A This is a letter written on Deneso stationery.

Q Whose signature is on it?

A Mr. Delmonico.

Q Who is it addressed to?

A Mr. Ivan Ezrine.

MR. WILSON: The Government offers it into evidence.

MR. SEIDMAN: If your Honor please, I have

no objection to this going into evidence, but again I reserve the right to object to the document, in view of the fact that it is not --

THE COURT: I'm sorry. I think we ought to get these objections out of the way as we go along. If you object to it, state the basis of your objection and I will rule.

MR. SEIDMAN: If your Honor please, if I can have it I will state the reason.

THE COURT: Surely. After Mr. Schweller is finished with it.

MR. SCHWELLER: No objection.

THE COURT: All right. Do you have any objection, Mr. Seidman?

MR.SEIDMAN: Yes. If I may see it.

I object to this letter being binding on my client, in view of the fact that it is a letter addressed to Mr. Ivan Ezrine, 37 East 68th Street, New York, New York and there has been no testimony that my client at any time saw, received, read or obtained this document.

THE COURT: Your objection is overruled, with the following instructions to the jury, which I think I gave once before but I will repeat it:

As I indicated to you ladies and gentlemen, the

first count in this indictment is a conspiracy count. Under the law of conspiracy, if the jury determines on evidence relating to one defendant or another defendant -- I mean the defendant you are then considering -- that that defendant was a member of the conspiracy specified in the indictment, then acts and statements taken by other people whom you find to be members of the conspiracy which were taken or done in furtherance of the conspiracy can be charged against the first defendant.

Therefore, when the time comes for you to make your determinations, let's say with regard to this letter here, you can't regard that as evidence against Mr. Feinberg unless you should find first that Mr. Feinberg was a member of the conspiracy charged in this indictment and that Mr. Delmonico or Mr. Ezrine was a member of the conspiracy in this indictment and that that letter was written in furtherance of the conspiracy.

Do you understand?

All right.

(Government's Exhibit 39 for identification received in evidence.)

MR. SEIDMAN: I most respectfully object, your Honor.

THE COURT: Do you think I have improperly

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stated the law? If you do I will be glad to talk to you in the robing room and find out what you believe to be a proper statement of the law.

MR. SEIDMAN: I most respectfully object at this point, your Honor.

THE COURT: Mr. Naiman, I notice that the second paragraph of this letter states that "It is further understood and agreed that Manor Nursing Homes will enter into a contract to purchase said 50,000 shares of stock at a price of $12 a share within a period of 360 days" -- approximately a year,

THE WITNESS: Yes, sir.

THE COURT: Is that the obligation that you were offering to --

THE WITNESS: Yes, sir.

THE COURT: When you said there was a guarantee that you would get 12?

THE WITNESS: Yes, sir.

THE COURT: And the $100,000 that you were to get then would be received by multiplying 50,000 shares by the difference between 10 and 12, or $2, is that right?

THE WITNESS: Yes, sir.

THE COURT: Thank you.

Q Mr. Naiman, who wrote this document?

A I wrote -- I dictated the document. It was typed in our office.

MR. SCHWELLER: I can't hear his answer.

THE COURT: He said he dictated the document.

Q Where was it typed?

A In our office at Park Avenue.

MR. WILSON: Your Honor, may I read this to the jury?

THE COURT: Yes.

(Mr. Wilson read to the jury from Government's Exhibit 39.)

MR. WILSON: It's dated January 26, 1970.

Q Mr. Naiman, I just read that third paragraph which talked about the receipt of a check --

MR. SEIDMAN: I object to the form of the question. The document speaks for itself.

THE COURT: He just said he read that.

MR. SEIDMAN: That's obvious.

THE COURT: It is offered. If you want to ask him what the third paragraph of the letter means -- Mr. Seidman, please be seated.

Q Did you receive a check for $20,000 at that time?

A No, we didn't.

Q The letter says you did, is that right?

A That's right.

Q Do you know why you didn't?

A I think they hadn't the funds to give us.

MR. SEIDMAN: I object to what the client -- or the witness thinks.

THE COURT: Sustained. The jury will disregard what the witness thinks.

Q Did you meet with Mr. Ezrine and Mr. Feinberg again, the week after the January 26th letter, which is Government's Exhibit 39?

A Yes, we did.

Q How many times did you meet with them?

A Several times.

Q Where did you meet with them?

THE COURT: When you say you, do you mean you alone?

THE WITNESS: No. I --

MR. WILSON: I haven't gotten there yet, your Honor.

THE COURT: I'm sorry.

Q Where did you meet with them?

A In Mr. Ezrine's office on East 68th Street in Manhattan.

Q Any place else?

A To the best of my recollection.

Q Who was present at these meetings?

A Mr. Delmonico, Mr. Ezrine, Mr. Feinberg and me.

MR. SCHWELLER: Your Honor, would he specify more clearly how many meetings, please, your Honor?

THE COURT: Can you remember how many meetings that week -- that week alone --

MR. SEIDMAN: And the date.

THE COURT: We have established the date as the week following January 26th.

MR. SCHWELLER: Your Honor, he used the word meeinggs, which means more than one meeting. I would like to know who was present at the meeting.

THE COURT: I am not going to do the cross examination for you, gentlemen. Your objections are overruled

MR. SEIDMAN: Can I --

THE COURT: Your objection is overruled.

Q As a result of those meetings was an agreement entered into?

MR. SEIDMAN: I object to the form of the question, your Honor.

THE COURT: Sustained. Strike the "as a result."

Q After these meetings, did you receive a certain document?

A Yes,we did.

Q I show you Government's Exhibit 40 and I ask you if you can identify it.

THE COURT: Can you identify it?

THE WITNESS: Yes, sir.

THE COURT: What is it?

THE WITNESS: This is an agreement which spells out the terms of the original letter written by Deneso Corporation in regard to the purchase of 50,000 shares of stock.

Q Who signed it?

A This agreement -- this letter is signed by Ivan Ezrine.

THE COURT: Is it a letter or an agreement?

THE WITNESS: It's an agreement in letter form.

THE COURT: Whom is the letter agreement between?

THE WITNESS: The letter agreement is addressed to the Deneso Corporation at 725 Park Avenue, East Orange, New Jersey, attention Mr. Delmonico, Treasurer, and it is signed by Glendale, Incorporated, by Ivan Ezrine.

THE COURT: Thank you.

MR. WILSON: Government offers it into evidence.

MR. SEIDMAN: If your Honor please, for the reasons previously stated --

THE COURT: You make the same objection?

MR. SEIDMAN: Yes.

THE COURT: And I make the same ruling.

MR. SEIDMAN: That this document is not binding on Mr. Feinberg.

MR. SCHWELLER: Your Honor, this document was written by one Ivan Ezrine --

THE COURT: We don't know whom it was written by. We only know whom it was signed by.

MR. SCHWELLER: This is not binding on Delmonico, the fact that Ezrine wrote this letter.

THE COURT: I make the same ruling as far as Mr. Delmonico is concerned --

MR. SEIDMAN: As a matter of fact --

THE COURT: Mr. Seidman, I have ruled on the admissibility of the exhibit.

MR. SEIDMAN: Well, I think there is a question as to whether or not the signature that is on there is Ivan Ezrine's. I don't dispute that, but I would hope that there will be some proof that it is.

THE COURT: It is received in evidence.

(Government's Exhibit 40 for identification received in evidence.

Q Mr. Naiman, did you see this document at some time

in the past?

A Yes, sir.

Q When was that?

THE COURT: You mean --

Q Approximately, when did you first see this document?

THE COURT: First?

A Early in the month of February, 1970.

MR. WILSON: Your Honor, at this time I would like to read the document, or parts of the document,to the jury.

MR. SEIDMAN: If your Honor please, I again object to the reading of the document, in that it will create such prejudicial statements as to Ira Feinberg in this case as to cause me to move for a mistrial.

MR. WILSON: It doesn't even mention his name.

THE COURT: I assume that you are now moving for a mistrial and that motion is denied.

(Mr. Wilson read to the jury from Government's Exhibit 40.)

MR. WILSON: I don't propose to read the rest of it, your Honor.

MR. SEIDMAN: May I see that, please.

Q Was there a closing on February 3rd --

THE COURT: Was there something you wanted to read?

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MR. SEIDMAN: I will be patient. Proceed, Mr. Wilson.

Q Was there a closing on February 3, 1970?

A No, there was not.

Q Now, between February 3, 1970 and February 17, 1970, did you have any other discussions with Feinberg and Ezrine?

A Yes, we did -- yes, I did.

Q How many times did you have such a discussion?

MR. SEIDMAN: I object to the form of the question as seeking to collectively bind people and intentionally intended to confuse this jury, your Honor.

THE COURT: Overruled.

MR. WILSON: Your Honor, it might be helpful -- there is something coming up that I might be better able to explain at the side bar, so you will know what my questions mean.

THE COURT: I don't see any problem about the question that was just asked, if you asked how many times he met with Mr. Feinberg and Mr. Ezrine.

Do you recall how many times you met with Mr. Feinberg and Mr. Ezrine between February 3rd and February 17th?

THE WITNESS: To the best of my recollection, with

Mr. Feinberg and Mr. Ezrine --

MR. SCHWELLER: When he says we --

MR. SEIDMAN: Is that conjunctive or disjunctive, your Honor?

MR. WILSON: I don't know what those words mean, but I said "or".

MR. SCHWELLER: Your Honor, he's repeatedly said we, when he means I.

Would you clarify that, your Honor?

THE COURT: Are you finished, gentlemen? First of all, Mr. Naiman, I am only asking at this time how many times you personally, not you and anybody else, but you personally -- whether you were with somebody else or whether you weren't with somebody else -- met with Mr. Feinberg or Mr. Ezrine during the weeks of February 3rd to February 17th.

Let's have that first.

THE WITNESS: To the best of my recollection, at least three or four times.

THE COURT: All right, now. At how many of those meetings was Mr. Feinberg present?

THE WITNESS: I would say two of those times.

THE WITNESS: And he was not present the other times, to the best of my recollection.

THE COURT: All right. Go ahead.

Q Who was present at all of the meetings?

A Mr. Delmonico and I always were together.

Q And what about Mr. Ezrine?

A He was present at all meetings.

Q Mr. Ezrine and Mr. Delmonico and you were always present and Mr. Feinberg was only present at some of them?

A That is correct.

Q Was the subject matter discussed at these meetings the same?

MR. SEIDMAN: If your Honor please, that's a leading, suggestive question, seeking to put into the witness' mind a repetition of similar testimony.

THE COURT: You have got to be kidding, Mr. Seidman.

MR. SEIDMAN: I absolutely am not. I think a proper question would be what was said at meeting No. 1.

THE COURT: That's what you think, and you are overruled.

Mr. Seidman, I must instruct all counsel in this case merely to make an objection, accept a ruling and sit down. If anything comes out of this case there is a right to apply to the Court of Appeals. That panel of judges will review my rulings and decide whether I am correct or not. It's improper for an attorney to argue

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with the judge after a ruling. I make no pretense to be infallible. I am doing my duty as I see it and I am judging as I believe the law to be.

MR. SEIDMAN: I apologize to your Honor. I didn't intend it in that way, your Honor.

THE COURT: Now, let's get along so we can try this case and the jury can ultimately some day resume its occupation -- its normal occupation.

MR. SEIDMAN: I hope so.

THE COURT: Now, between the period of February 3rd and February 17th, you have said that the conversations at all these meetings dealt with the same subject.

Go ahead.

Q What was the subject matter that you discussed at each of these meetings?

MR. SEIDMAN: If your Honor please, may I object to the form of the question.

THE COURT: No, you may not.

What is objectionable to saying, "What was the subject of a meeting"?

MR. SEIDMAN: If your Honor please, if the question is read back --

THE COURT: Read it back.

(Question read.)

MR. SEIDMAN: That's what I object to, your Honor.

THE COURT: What?

MR. SEIDMAN: He is seeking to put all these meetings in one question and suggesting to the witness, I submit, that the same subject matter is what was spoken about at all these meetings.

THE COURT: The witness just testified to what is the case.

MR. SEIDMAN: After it was suggested to him.

THE COURT: Did my statement of a moment ago make no difference? I am at my wits' end, Mr. Seidman. In six years on the bench I have never, never experienced in the last ten days in this court -- will you please give the answer, Mr. Witness. Let's go meeting by meeting.

Will you please tell us what happened at the first of these meetings?

MR. WILSON: Your Honor, may I put one question to the witness.

THE COURT: I prefer not.

THE WITNESS: Your Honor, I can give you what was generally part of all of the meetings, but specifically the -- the transaction changed.

THE COURT: Can you tell us what occurred over

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the course of the meetings?

THE WITNESS: Okay. In the first meeting, in the first meeting after the dates of the original closing scheduled, after February the 3rd or 4th or 5th, in that area, we -- we were informed by Mr. Ezrine that $500,000 or 50,000 shares wasn't sufficient to close this transaction, so discussions were held -- discussions were held as to Deneso subscribing and agreeing to purchase more than 50,000 shares.

THE COURT: All right.

THE WITNESS: And various means by which we would buy more than 50,000 shares were discussed in these meetings, both by telephone and in person with Mr. Ezrine, and to the best of my recollection, Mr. Feinberg --

THE COURT: Who discussed this with Mr. Ezrine?

THE WITNESS: I handled the discussion on the part of Deneso Corporation.

THE COURT: At the meetings?

THE WITNESS: At the meetings and on the telephone.

THE COURT: All right. You alone on the telephone, is that right?

THE WITNESS: Yes, sir. That --

THE COURT: I just want to know who --

THE WITNESS: In our office there was a means of

pushing a button so that --

THE COURT: I don't doubt there was, but if you mean that somebody else was listening on the phone, then you have to have personal knowledge of it or who it was.

THE WITNESS: I have no personal knowledge.

THE COURT: All right. Then don't suggest it.

THE WITNESS: All right.

THE COURT: All right. That was the first meeting, and you had discussions about Deneso buying additional shares.

THE WITNESS: That's right.

THE COURT: Proceed.

THE WITNESS: At subsequent meetings the amount was increased from 50,000 shares to 110,000 shares and the various ways and means by which Deneso Corporation would purchase 110,000 shares of stock.

THE COURT: All right. Mr. Wilson.

Q After these meetings was a document prepared?

A Yes, sir.

Q I show you Government's Exhibit 41 for identification and I ask you if you can identify it.

THE COURT: Can you identify it?

THE WITNESS: Yes, sir.

THE COURT: What is it?

THE WITNESS: This is a letter contract, an agreement written on Deneso Corporation's stationery, signed

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by Mr. Delmonico, that Mr. Ezrine and I composed, the language the legal terms by Mr. Ezrine --

THE COURT: It's an agreement between Deneso and whom?

THE WITNESS: Glendale, Incorporated.

THE COURT: All right.

MR. WILSON: Government offers it into evidence.

MR. SEIDMAN: For the same reason previously stated I object.

THE COURT: Same ruling. I assume Mr. Schweller makes the same objection, and the same ruling.

(Government's Exhibit 41 for identification received in evidence.)

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MR. WILSON: Your Honor, I would like to read selected portions of this.

THE COURT: All right.

MR. SEIDMAN: I most respectfully object for the same reason previously stated, your Honor.

THE COURT: You have a continuing objection to these procedures. That's a customary way of handling this.

MR. SEIDMAN: Thank you, your Honor.

MR. SCHWELLER: Your Honor, I do object in the sense that it is not binding on my client, because it was prepared by somebody else.

THE COURT: I have already assumed that objection and made my ruling. It's received in evidence, however.

MR. SCHWELLER: It was prepared by somebody else and composed by somebody else.

THE COURT: As I understand it it was composed by Mr. Ezrine and prepared by you, is that correct?

MR. SCHWELLER: I think he said composed.

THE COURT: Composed, a very fine word.

MR. SEIDMAN: Pardon me, I wasn't paying attention. Did I hear Mr. Feinberg's name mentioned?

THE COURT: Mr. Wilson, will you proceed?

(Mr. Wilson read to the jury from Government's Exhibit 41.)

THE COURT: Do you wish to read anything further, Mr. Schweller?

MR. SCHWELLER: It's a little bit too complex even for myself, your Honor.

THE COURT: All right. Do you wish to read anything further from that at this time, Mr. Seidman?

MR. SEIDMAN: If your Honor please --

THE COURT: I just want a yes or no answer.

MR. SEIDMAN: No, but I state my objection again.

THE COURT: Why state it again?

MR. SEIDMAN: Then I shall not, your Honor.

Q Was there any compensation to be paid to Deneso Corporation as of February 17th, which was not set forth in that agreement?

MR. SEIDMAN: I object to the form of the question, your Honor, as being so leading -- and I don't appreciate having to stand up and I apologize.

THE COURT: Are there any terms of the transaction between the parties that weren't included in that letter agreement?

THE WITNESS: Yes, sir.

THE COURT: Will you tell us what they were?

THE WITNESS: To the best of my recollection, there was an additional payment of $35,000 in cash.

THE COURT: And when you say that, to what are you referring?

Was there a conversation or what, in relation to that?

THE WITNESS: Yes, sir. There were conversations in which Deneso Corporation -- Mr. Feinberg and Mr. Ezrine agreed to pay an additional $35,000 --

THE COURT: You are going too fast, for me, anyway. Where did such conversations occur and who was present?

MR. SEIDMAN: And who said what, if I might respectfully request?

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THE COURT: Let's get my question first.

THE WITNESS: To the best of my recollection, the conversations took place at Mr. Ezrine's office. Present were Mr. Feinberg, Mr. Ezrine, Mr. Delmonico and me.

THE COURT: All four of you?

THE WITNESS: Yes.

THE COURT: And will you tell us who said what in relation to these extra terms that were not included in the letter agreement?

THE WITNESS: To the best of my recollection, the $35,000 -- the suggestions or the first statement about the $35,000 --

THE COURT: Right.

THE WITNESS: -- I'm not certain where it came from, but --

THE COURT: Could it have been you?

THE WITNESS: No. I didn't have $35,000.

THE COURT: Who was to get the $35,000?

THE WITNESS: Deneso Corporation was to get $35,000.

THE COURT: Did you propose that it should get the extra $35,000?

THE WITNESS: I might have requested that we get

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additional sums of money.

THE COURT: That's what I am asking.

THE WITNESS: Yes.

THE COURT: So you might have been the proposer of this term?

THE WITNESS: Yes, but I'm not certain of that, either, your Honor.

THE COURT: All right.

THE WITNESS: To the best of my recollection, it was agreed, and Mr. Feinberg was to pay the $35,000 at the closing.

Q Other than the cash, was there anything else said?

A Oh, we were to receive -- we were to receive two notes and an -- and checks, as outlined by -- from Glendale in the amount of $30,000.

Q Let me show you what has been marked as Government's Exhibits 42 and 43. Can you tell us what they are?

A One is a check in the amount of $10,000 to the Deneso Corporation. The other is a check in the amount of $20,000 to the Deneso Corporation.

Q What happened to those checks?

A They were deposited in the account of the Deneso

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(Discussion off the record.)

THE COURT: Let's put this on the record.

Mr. Seidman objects to the introduction of the exhibits just proffered, Exhibits 42 and 43 on the grounds that it is stipulated that these checks were returned for insufficient funds.

The Court rules that that is irrelevant and that the exhibits are admissible nevertheless.

MR. SCHWELLER: Also, your Honor, our stipulation will be pointed out to the jury when you come back, about the checks. Maybe it is --

MR. WILSON: It's still my direct.

THE COURT: We will take ten minutes from this time, gentlemen.

(Recess.)

[In the robing room:]

MR. WILSON: I asked for this meeting as a result of certain things that happened in my direct examination of Mr. Naiman just a little while ago. Mr. Naiman at one point recollected a meeting between Feinberg, Ezrine, Delmonico and himself in which there was a discussion about the $35,000 in cash. Mr. Naiman had never related that conversation to me before that meeting as such.

During the recess I went back to Mr. Naiman to find out whether he actually did at this point recall such a conversation. He told me that he really can't recall that that meeting took place.

As a result, your Honor, I propose to go in and immediately return to that conversation and to elicit from the witness the fact that he does not really recall a meeting but that prior to February 20 he did have certain knowledge of the $35,000. He does not know how that knowledge came from exactly and what the details were, whether there was a meeting or not, but that he knew as of February 20 that Mr. Feinberg would be delivering $35,000 in cash at the closing.

I think the fact that there was $35,000 in cash delivered at the closing is a fact that he, Mr. Delmonico,

checks? Did they clear or did they bounce?

A They were returned for insufficient funds, to the best of my recollection.

Q Now, Mr. Naiman, during this last ten-minute recess you and I had a conversation with Mr. Hoskins and Mr. Camarrato and Mr. Virella out in the hall; is that right?

A Yes.

Q Did I ask you certain questions about the conversation you had testified to here earlier about the $35,000?

A Yes.

Q Do you want to tell the jury anything about that conversation?

A I have tried to recall. I am not certain of a meeting taking place relative to the $35,000. I only know that it was a definite arrangement that we were to receive, that is, that Denesco Corporation was to receive $35,000 in cash at the closing.

How it came about I have tried to recall and it is vague. I really don't know.

Q Now, Mr. Naiman, after February 17 and before February 20, did you talk to Mr. Ezrine on the telephone?

A Yes, I did.

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Q Did you talk to him more than once?

A Yes, I did.

Q Would you tell the jury what you told him and what he told you in those conversations?

A To the best of my recollection, because of dates, I think on the 18th it was necessary for me to go to Danville, New York where my wife's daughter resided.

THE COURT: Is that relevant?

MR. WILSON: Yes, it is.

Q Did you tell Mr. Ezrine that?

A Yes.

Q What else did you tell him?

A My wife -- I told him that we were unprepared as to the amount of money necessary for the closing and that in all probability I would be able to arrange it immediately upon my return.

Q When was that?

A In the following week.

Q The week after February 20th?

A Yes, sir.

Q What else did you talk to him about?

A I talked to him -- it was then -- I was then informed that to effect the closing more than a million, one hundred thousand dollars was going to be needed.

THE COURT: You mean Mr. Ezrine told you this?

THE WITNESS: Yes.

THE COURT: If you can, insofar as possible, Mr. Naiman, would you tell us what happened in this way: I told Mr. Ezrine, Mr. Ezrine told me?

THE WITNESS: Yes. Mr. Ezrine told me that they were going to need a million, one hundred thousand dollars; that they were going to need a million, six hundred thousand dollars and that the selling stockholders would help and provide any funds that were short, and I agreed with Mr. Ezrine that I would tell Mr. Delmonico to write checks in the amount of a million, six hundred thousand -- seven hundred thousand, a million, seven hundred thousand dollars, I suppose. It is a million, seven hundred thousand at the closing, and that on my return we could effect the necessary bank loans to close this transaction out.

4.2pm Q During the period --

MR. SEIDMAN: If your Honor please --

MR. WILSON: The next question will take care of your problem.

THE COURT: You people are both psychic.

MR. WILSON: I do not think I am on this one.

MR. SEIDMAN: I don't profess to be.

A Blue Bell, Pennsylvania, my home.

Q Did you have occasion on that day to see Mr. Delmonico?

A Mr. Delmonico came to see me at my home.

Q Will you tell us what you said to each other and what you saw at that time?

A Mr. Delmonico told me that he had been to the closing; that he had given checks out in the amount of a million, seven hundred thousand dollars; that he had received a check from Benjamin Werner, the broker, for $75,000; that he had received $35,000 in cash from Mr. Feinberg and that he had received confirmation slips from Mr. Werner, the broker, for 110,000 shares of stock.

Q Mr. Naiman, I show you what has been marked as Government Exhibit 44 for identification. Can you tell us what that is?

A This is Benjamin Werner's check made out to the Denesco Corporation in the amount of $75,000.

Q Have you seen that before?

A Yes, sir.

Q When did you see it?

A February 22, at my home.

MR. WILSON: The Government offers it into evidence.

Q Do you recall anything about the Lausanne Investment Company?

A I questioned the fact that one of the confirmations was not in the name of the Denesco Corporation, Mr. Delmonico, me or anyone associated with the Denesco Corporation, but was made in the name of the Lausanne Investment Corporation. And Mr. Ezrine stated that it was one of his companies and that the stock -- all the stock certificates would be in street form.

THE COURT: Will you explain to the jury what that means?

THE WITNESS: Street form means that they are stock certificates held by a broker as a rule and endorsed by him for sale, pledge or transaction without it necessarily being in any specific name.

THE COURT: I'll advise the jury that that means, ladies and gentlemen, that such stock if otherwise tradable can be traded without the necessity of getting the signature of the owner or the consent of the owner. In other words, it is like -- I won't say another word.

Q Did you obtain possession of the stock certificates?

A Subsequent to February.

Q February 22?

A February 22.

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Q When did you get those stock certificates?

A To the best of my recollection either Tuesday or Wednesday of the following week.

THE COURT: Which would have been when?

THE WITNESS: The 23rd, 24th or the 25th.

THE COURT: Who received the physical delivery?

THE WITNESS: Mr. Delmonico.

THE COURT: Were you with him when you received them? Do you really remember?

THE WITNESS: I don't remember, your Honor.

THE COURT: Did you ever see the stock certificates?

THE WITNESS: Yes, I did.

THE COURT: Where did you see them?

THE WITNESS: In the Denesco Corporation offices.

Q Mr. Naiman, I show you what has been marked as Government Exhibit 50. Have you ever seen that before meeting with me in my office?

A Never saw this before meeting with you in your office.

Q Do you know whose signature appears on Government Exhibit 50?

A Mr. Delmonico's.

MR. WILSON: I am not offering it. Would you

like to look at it?

MR. SCHWELLER: Yes, I would like to look at it.

Q Now, after February 22, did there come a time when you had a meeting with Mr. Feinberg, Mr. Ezrine and Mr. Delmonico?

A Yes, sir.

MR. SEIDMAN: If your Honor please, I again object to the form of the question as suggesting the meeting itself.

THE COURT: I would prefer you to ask if he had a meeting with any of the other persons involved in the issuance of the Manor Nursing Centers stock. I mean, now you asked the question, but in the future if you would not suggest the meeting it would be better.

Anyway, you did have a meeting. Proceed.

Q Where did the meeting take place?

A Mr. Ezrine's office.

Q When did it take place?

A To the best of my recollection it took place on the 24th of February.

Q Would you tell us what was said at that meeting and by whom, if you can recall?

A I stated that we were having difficulty in arranging the bank loans; that we did not as yet have the

stock certificates; that we needed these to effect a loan; and I suggested also that I knew of an invester in Philadelphia who could be induced to purchase 50,000 shares of this stock and tender $500,000 if he could be provided -- if we could provide for him New York Stock Exchange puts guaranteeing performance at a specific price some time in the future, six months.

Q Mr. Naiman, were you ever able to get the bank monies to purchase this stock?

A No, sir.

Q What did you do with the stock certificates that had been delivered to Denesco?

A The first week in March they were returned to Mr. Ivan Ezrine.

MR. SCHWELLER: Your Honor, who returned them? I would like to have the answer to that.

Q Do you know who returned them?

A Mr. Delmonico returned them.

Q In this period of time, February 24 to the return of the stock certificates, did you have other conversations with Mr. Ezrine or Mr. Feinberg?

MR. SEIDMAN: If your Honor please, I object again. By indirection counsel is seeking to do what you admonished him not to do.

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THE COURT: Why can't you do what I asked you?

MR. WILSON: I am not trying to find out what said, just that he talked. I don't have any way of doing that except to ask him about the people that I am directing his attention to.

THE COURT: I must admit that I'm getting very scrupulous, just in order to avoid objection, but I will ask the question: After this meeting of February 24 did you have any further meetings with the principals, with any of the principals in this case?

THE WITNESS: To the best of my recollection we met --

THE COURT: Who is "we"?

THE WITNESS: Mr. Delmonico and I met with Mr. Ezrine, Mr. Feinberg and/or either one of them at least twice a day.

THE COURT: Over what period?

THE WITNESS: For that week.

THE COURT: Which week -- February 24?

THE WITNESS: The week of February the 24th, the 23rd being a Monday, a holiday.

THE COURT: All right.

MR. WILSON: I don't mean to antagonize the Court, but I'm not sure how I am going to ask the next question.

THE COURT: You ask it and I'll tell you.

end.

Q After the return of the stock certificates did you have a meeting with Mr. Feinberg?

MR. SEIDMAN: I object to that, your Honor, as again suggesting to the witness where a meeting or whom a meeting was had with.

THE COURT: Overruled.

Q Where did that meeting take place?

THE COURT: Have you answered the question yet?

THE WITNESS: No.

THE COURT: Do you know what the question is?

THE WITNESS: Yes. Did I meet with Mr. Feinberg subsequent to the week of February 23rd?

THE COURT: Subsequent to the return of the stock certificate?

THE WITNESS: Yes, in the following week the stock certificates were returned.

THE COURT: You are talking about Mr. Delmonico's return of the stock certificates to Mr. Naiman --

THE WITNESS: The stock certificates were returned to Mr. Ezrine.

THE COURT: Excuse me. After Mr. Delmonico returned the stock certificates to Mr. Ezrine did you meet with Mr. Feinberg?

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THE WITNESS: To the best of my recollection Mr. Feinberg came to the offices --

Q Do it my way, Mr. Naiman.

A Yes, sir.

Q Did you have a meeting?

A Yes, sir.

Q Where was it?

A To the best of my recollection it was in East Orange at the office of the Deneso Corporation.

Q Who was there?

A Mr. Delmonico, Mr. Feinberg and I.

Q And will you tell us what was said at that meeting and by whom?

A Mr. Feinberg demanded the return of the cash money paid to Mr. Delmonico at the closing, and Mr. Delmonico agreed to return the money.

Q And was the money returned?

A $30,000 was returned.

Q What happened to the other $5,000?

A To the best of my recollection, $5,000 was deposited in the bank to make good checks that had been returned because of the checks that were not good, that the Deneso Corporation deposited from the Manor Nursing people.

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immediate transaction for the bonds.

Q And when you got there you found the FBI agents were waiting for you?

A That is correct.

Q And as a result of that you were indicted, were you not?

A Yes, I was.

Q And as a result of that you pleaded guilty?

A Yes, I did.

Q And on January 25th, 1972 or thereabouts you started to serve a three-year sentence, is that right?

A Yes, it is.

Q Now, Mr. Naiman, you have a lot of other convictions, is that right?

A Yes, I do.

Q We are going to have to go over them.

In 1968 --

MR. SEIDMAN: May I have a copy of that, if you have one.

Maybe Mr. Hoskins can help me while you proceed with your questioning.

MR. HOSKINS: I don't know where they are, so I can't help you on this.

THE COURT: Can you look on with Mr. Schweller?

Q You have already told us, Mr. Naiman, that in 1969 you served a six months' sentence for fraud.

A Yes, sir.

MR. SCHWELLER: Your Honor, may I make that statement. This record starts in 1935. Why don't we go in chronological order.

THE COURT: Mr. Wilson is entitled to go any way he wants. You can't tell another lawyer how to try his case.

Q 1935 dealt with a reformatory, did it not?

A Yes, sir.

THE COURT: May I make this suggestion; that you give whatever material you have to the witness and let him tell us what the record is.

MR. WILSON: Your Honor, the record, as you may know, is one of those documents that are very unclear.

MR. SEIDMAN: I object to that statement.

MR. WILSON: There would be no need for this --

THE COURT: Be seated, gentlemen. Proceed, Mr. Wilson.

Q In 1940 you received 2-1/2 to 10 years for grand larceny second degree?

A Yes, sir.

Q In 1944 you were sentenced to three to six

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years for forgery, is that right?

A Yes, sir.

Q In 1953 you received a three-year sentence for the interstate transportation of stolen property, is that right?

A Yes, sir.

Q And again in 1958, you had a conviction for the interstate transportation of stolen property, is that right?

A Yes, sir.

Q And in 1967, you received a one-year sentence in connection with stolen property, is that right?

A Yes, sir.

THE WITNESS: May I make an aside, your Honor?

THE COURT: Not at the moment.

Q Are there any other convictions that you believe you have that we have not gone over, Mr. Naiman?

A No, I think you have covered them all.

Q There were lots of other arrests, is that right?

A Yes, sir.

Q In fact you have a very extensive record since 1935, is that right?

A Yes.

THE COURT: Now, is there anything you want to

and you have all been very faithful.

I just want you to realize that you are my partners in getting this case finished, and I promise you I'll keep after those lawyers to make this case as short as it is possible to be.

Thank you.

Mr. Schweller -- call Mr. Naiman, please.

J A C K N A I M A N, resumed the stand and testified further as follows:

CROSS EXAMINATION

BY MR. SCHWELLER (Continued):

Q Now, Mr. Naiman, since yesterday have you had any conversation with either Mr. Wilson or Mr. Hoskins concerning your testimony given yesterday?

A No, sir.

Q I didn't hear you, sir.

A No, sir.

Q All right.

Now, as I recall your testimony of yesterday, you said, did you not, that you had been convicted of nine crimes dating back to 1935, is that correct?

A Yes, sir.

Q And would you characterize them as nonviolent crimes but monetary type of crimes?

A Yes, sir.

Q Thank you.

A My dealings with him prior to that were in Little Rock, Arkansas.

Q That's where my mistake was.

Thank you.

Mr. Naiman, in December of '69, when you did speak to Mr. Jamieson, is it correct to state that you didn't speak to him about the Manor Nursing Centre deal?

A I did speak to him about the Manor Nursing Centre deal.

Q Was it he who initiated that conversation with you or did you initiate it with him?

A He initiated it with me, sir.

THE COURT: I thought you said you called him.

THE WITNESS: I did, prior --

THE COURT: You mean you called --

THE WITNESS: I called him prior to a call about Manor Nursing Centre.

THE COURT: Well, you said that you called him in December of '69.

THE WITNESS: Yes, sir.

THE COURT: You called him, right?

THE WITNESS: Yes, sir.

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THE COURT: In that conversation did you talk to him about Manor Nursing Centre?

THE WITNESS: No, sir. He then called me --

THE COURT: When?

THE WITNESS: Maybe a week later.

THE COURT: All right.

Q Might that have been in January of '71 -- '70 -- pardon me.

A Well, to the best of my recollection, it was in that area, but I think it was at the very end of December. It might have been the beginning of January.

THE COURT: Does it matter whether it is the end of December or the beginning of January?

MR. SEIDMAN: I am proceeding to my next question.

THE COURT: He called you and he raised the question of Manor Nursing?

THE WITNESS: Yes, sir.

Q Will you tell us what you did as a result of that conversation you had with Mr. Jamieson with respect to Manor Nursing Centres, Inc.? Did you call someone or did -- or as a result of that conversation with Mr. Jamieson did a Mr. Ivan A. Ezrine call you?

A To the best of my recollection, Mr. Ezrine

called me.

Q And is it correct to state that Mr. Jamieson told you that he would have a Mr. Ivan Ezrine call you?

A Yes, sir.

Q And is it correct to state that Mr. Jamieson stated that Mr. Ezrine would call you about a stock deal?

A Yes, sir.

Q Did there come a time, in either the end of December of '69 or the early part of January of 1970, that Mr. Ivan A.Ezrine did in fact call you?

A Yes, sir.

Q And could you be kind enough to approximate the time, if you can, that you received the telephone call from Mr. Ivan Ezrine?

A To the best of my recollection, it would have been in the early part of January, 1970, or the very end of December 1969. I'm not clear in my mind as to the specific date.

Q Up to and including the initial telephone conversations with Mr. Jamieson and that initial telephone conversation with Mr. Ezrine, had you ever heard of or known of an individual by the name of Ira Feinberg?

A No, sir.

Q You had never met him?

A No, sir.

Q Nor spoken to him?

A No, sir.

Q Or had any other business dealings with him, is that correct?

A That is correct.

Q When Mr. Ezrine spoke to you, did you know who he was and what the nature of his business was?

A Yes, sir.

Q Could you tell us what you understood his business was, and will you be kind enough to state that?

A I knew that he was an SEC acting attorney who was very active in the stock market, and I had already completed a deal with Mr. Ezrine.

THE COURT: What do you mean, an SEC acting --

Q You had a prior deal with Mr. Ezrine?

A Yes, sir.

THE COURT: What do you mean by an SEC acting attorney?

THE WITNESS: The word acting is probably incorrect. I knew that he was an attorney who practiced law as it dealt with the Securities and Exchange Commission.

THE COURT: A lawyer who specialized in securities transactions?

THE WITNESS: Yes, sir. 205a

Q And by that do you mean a lawyer who specializes in preparing papers for companies that wish to sell stock to the public and causes those papers to be filed with the Securities and Exchange Commission, is that correct?

A Among other things, yes, sir.

Q Now, you had indicated to me that prior to the telephone call from Mr. Jamieson, is it correct to then state that you knew Mr. Ezrine before that?

A I had never met Mr. Ezrine before that. I had spoken to him on the telephone prior to that.

Q When was that, please, Mr. Naiman?

A Oh, I would say in October or September of that year.

Q And did you enter into any business deal with him?

A Yes, I caused a deposit to be made in Mr. Jamieson's bank for the benefit of Mr. Ezrine.

Q For how much money, please?

A $100,000, as I recall.

Q And did you receive any monies from Mr. Ezrine for performing the service of causing $100,000 to be deposited in Mr. Jamieson's account for the benefit of Ivan A. Ezrine?

A It wasn't for the account of Ivan A. Ezrine; it was

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for some oil company.

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Q Great Basin Oil?

A Great Basin Oil Company is correct, and I was employed by All-State Bond and Mortgage, when I did that, and Mr. Ezrine paid All-State Bond and Mortgage a fee for doing their work.

Q And do you know the amount of that fee, please?

A To the best of my recollection, it was approximately $9,000, or $9,000.

Q And might you explain, if you would, what service you returned as a representative of Columbia -- is it Columbia?

THE COURT: All-State.

A All-State Bond and Mortgage.

Q Pardon me. All-State Bond and Mortgage, is it?

A Yes, sir.

Q In arranging for Ezrine to get $100,000 placed into his Alabama or Arkansas account?

THE COURT: Was it placed in Ezrine's account or Jamieson's account?

THE WITNESS: No.

Q The company's account?

A No, it wasn't placed in the company's account at all. It was placed -- it was deposited with the Union

National Bank or the Union Bank and Trust Company of Little Rock, Arkansas, for which they issued a certificate of deposit bearing an interest rate that I don't recall but below that that would be the maximum that they could pay, and Mr. Ezrine paid the difference between the going rate at the time for funds deposited in a bank and the amount that the bank was paying.

Q Is it correct -- is it correct to state that Mr. Ezrine then had the use of $100,000 either individually or through some corporation that he was controlling?

A I didn't know what transaction he had with the bank, but I knew that it was done at his request.

Q And is it correct to state, based on your familiarity with banking procedures of this type, Mr. Naiman, that Mr. Ezrine, either individually or as a controlling party in this transaction --

THE COURT: There is no indication he was a controlling party of anything. He gave some instructions.

A That is it.

Q Did you come to learn at any point that Great Basin Oil Company was in truth and fact a company owned or controlled by Mr. Ezrine?

A No, sir.

Q Do you know whether Great Basin Oil Company

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is a company owned by Mr. --

THE COURT: It seems to me that is the same question. He said no.

Q If I were to show you testimony --

THE COURT: No. Stop the question.

MR. SEIDMAN: Very well, your Honor.

Q Now, getting back to our phone call from Ezrine to you concerning Manor, I believe you testified that you had not met Mr. Feinberg and didn't even know his name at this point, is that correct?

A That is correct.

Q But you had had prior dealing with Ivan A. Ezrine, is that correct?

A Yes, sir.

Q When Mr. Ezrine spoke to you or when you spoke to him via the telephone -- by telephone, in late December or early January of 1970, did Mr. Ezrine indicate to you that he was the Securities and Exchange Commission lawyer for a company called Manor Nursing Centres, Inc.?

THE COURT: I think that expression, "Securities and Exchange Commission lawyer," is very confusing. There is no such thing, in my view of the matter, except somebody who works for the Securities and Exchange Commission.

MR. SEIDMAN: I will rephrase that, your Honor.

Q At the time, in late December or early January of 1970, Mr. Naiman, when Mr. Ezrine called you or you called him -- I believe that he called you -- did he indicate to you that he is an attorney who was representing Manor Nursing Centres, Inc. for purposes of preparing all papers or any papers to be filed in order to go what is called in the street public?

A That is -- yes. The answer would be yes.

Q And at that time prior to the call, had Mr. Jamieson told you that Mr. Ezrine would call you and that Mr. Ezrine had an interesting deal that you might be interested in?

A Yes, sir.

Q And at the time Mr. Ezrine called you, in late December '69 or early January, did he want to speak to you about a deal that Ivan Ezrine had?

A Yes, sir.

Q Can you tell us what he, Ivan Ezrine, said in that conversation and what you said to him, as best you recall, in substance?

A To the best of my recollection, Mr. Ezrine said that he had an all-or-nothing issue for four and a half million dollars and that he was the attorney for the corporation, that their subscriptions were short 50,000

shares, or $500,000, and that he was attempting to have Deneso, the company that I was then with, purchase 50,000 shares of stock under terms that we would arrange.

THE COURT: Is this the conversation to which you testified yesterday?

THE WITNESS: Yes, it is.

Q How did he know of a company called Deneso. Had you told him or had Jamieson told him, if you know?

A To the best of my recollection, it would have been Mr. Jamieson that told him --

THE COURT: All you know is that you didn't tell him, is that right?

THE WITNESS: I didn't tell him, that's right.

Q However, during the course of your conversation, the name of Deneso Corporation did in fact come up?

A Well, he called up, so he would have had to have known the name Deneso.

Q And he asked for you?

A Yes.

Q Mr. John Naiman?

A Yes.

Q After that initial conversation --

MR. SEIDMAN: Strike that.

Q Did you, in that conversation, agree with

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Mr. Ezrine that you would seek to purchase on behalf of Deneso Corporation 50,000 shares of Manor Nursing Centres, Inc. stock?

A To the best of my recollection, at that call, I told him that we were interested in such a transaction and that we would discuss terms when we met.

Q And Mr. Ezrine indicated to you that he was in control of the situation and he could work out those terms, is that correct?

MR. WILSON: Objection.

THE COURT: Ask him what was said. Don't characterize it.

MR. SEIDMAN: It is cross examination, your Honor.

THE COURT: I don't care about that. You are giving the jury an impression that such a statement was made.

MR. SEIDMAN: I believe that prior to that, the witness said that.

Can you read that back, so I can rephrase it?

THE COURT: Please don't read it back. It's the very thing I want to avoid.

Q What else did Mr. Ezrine say to you during the course of that conversation? Did he seek to assure you in any way?

A I am not quite clear what you mean, assure me.

Q What representations, if any, did he make to you concerning his ability or relationship to the Manor Nursing Centres, Inc. stock?

A I don't recall that that was important. He outlined the deal. I told him I was interested in it and "Let's arrange a meeting".

Q Did you arrange a meeting?

A Believe so -- yes, sir. Pardon me.

Q And if you recall, when did that meeting take place?

A The latter part of January.

Q Of 1970?

A Yes, sir.

Q Where did it take place?

A East Orange, New Jersey, in the offices of Deneso Corporation.

Q Who was present?

A Mr. Feinberg, Mr. Weiner, Mr. Ezrine, Mr. Delmonico, Mr. Camarrato, Mr. Milowitz and me.

Q Now, in answer to the questions of Mr. Schweller previously, you indicated that in essence you were the spokesman for --

THE COURT: Deneso.

Q -- Deneso Corporation, is that correct?

A Yes, sir.

Q Can you tell us who was the spokesman for Manor Nursing Home with respect to your participation -- Deneso's participation in the deal? Was it Mr. Ezrine?

A Mr. Ezrine. Mr. Feinberg explained the operation of Manor Nursing Home and their hopes for the future and Mr. Ezrine and I dealt with the particular situation.

Q So Mr. Feinberg told you what Manor Nursing Centres was, what its business was, that it was a nursing home, in essence, and how he hoped to build other nursing homes, is that correct?

A Yes, sir.

Q Now, let's get to the financial and security law aspects of the case.

Were the financial aspects of your relationship with the Manor Nursing stock discussed between you and Mr. Ezrine?

A I believe that is correct.

Q What did Mr. Ezrine say to you as the attorney for Manor Nursing Centres and what did you say to him during the course of that conversation?

MR. WILSON: Can we find out who else was at that conversation?

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THE COURT: I thought we just had it.

MR. WILSON: I am not sure that it is --

THE COURT: Is this still the first meeting?

MR. WILSON: All right. If we are all satisfied who was there.

THE COURT: Well, the witness just finished saying, Mr. Feinberg, Mr.Ezrine, Mr. Weiner or Werner -- Weiner, Mr. Delmonico --

MR. SCHWELLER: Your Honor, he said that Mr. Delmonico was present but he didn't say he was participating in the conversation. I object to that.

THE COURT: I said present for all these people. I didn't say he was participating.

THE COURT: Will you read back what I said?

(Record read.)

MR. SCHWELLER: But it implies that Mr. Delmonico took part.

THE COURT: I didn't give any impression. I just named some names that the witness named.

MR. SCHWELLER: I'm sorry.

THE COURT: In any event, proceed.

(Question read.)

A In substance, Mr. Ezrine reiterated -- said again what we had talked about on the telephone, that Manor

Nursing Home was short 50,000 shares for the completion of their all-or-nothing deal, that promises or subscriptions that they had from funds in Europe would be delayed three or four months and that they wanted -- he wanted Deneso Corporation to work out with him, that is, with Manor Nursing Homes, a means by which Deneso Corporation would purchase 50,000 shares of stock for $500,000.

Q Mr. Naiman, I don't question your testimony, however, for purposes of this transaction, wouldn't you be purchasing stock through the underwriter, Benjamin Werner, and not directly from Manor Nursing?

A That is correct. We would be purchasing it from the underwriter, issued by Manor Nursing Homes.

Q So that we might save some time, when you went to the closing -- when I say you, of course, when Deneso appeared at the closing as a corporate entity, Deneso was purchasing stock that was in the possession of Benjamin Werner & Company, is that right, the underwriter?

A To the best of my recollection and knowledge, that's so.

Q And did you agree to purchase 50,000 shares of Manor Nursing Centres, Inc. stock from the underwriter, Benjamin Werner?

THE COURT: You mean, did he agree on behalf of

Deneso?

MR. SEIDMAN: On behalf of Deneso.

Q When I say you, Mr. Naiman, I always mean Deneso.

MR. SCHWELLER: Your Honor, I object to that.

THE COURT: Say Deneso when you mean Deneso and say Naiman when you mean Naiman.

Q Did you, Mr. Naiman, on behalf of Deneso, agree to purchase from Benjamin Werner & Company, 50,000 shares of Manor Nursing Centres, Inc. stock, at that meeting?

A At that meeting we discussed the terms under which we would act in that capacity. I don't know that if on that particular meeting we --

Q Closed --

A -- definitively made an agreement.

Q So therefore it is possible that at that first meeting all that was had was a discussion of what one might call general principles of the deal?

A Except that I outlined the position that Deneso would want to include in this deal.

Q Did there come a time that there was a second meeting?

A Yes, sir.

Q And where did that second meeting take place, if you remember?

THE COURT: Where?

MR. SEIDMAN: Yes.

A It isn't clear to me where the meetings took place in relationship to one after the other. I know that there were meetings in our office at East Orange, New Jersey, and that there were meetings in Mr. Ezrine's office, in New York City.

Q Is it correct to state that Mr. Ezrine's office, in 1970, was located at 37 East 68th Street, New York, New York?

A Yes, sir.

Q And was Mr. Ezrine's office located in a sumptuous townhouse on that street?

A Yes, sir.

Q And did Mr. Ezrine -- was Mr. Ezrine's office located on the street floor of that sumptuous townhouse?

MR. WILSON: I love the description of sumptuous. I don't object to it.

THE COURT: It doesn't need to be repeated.

Q Was Mr. Ezrine's office located on the street floor of the townhouse?

A Yes, sir.

Q And did you visit that location with respect to your purchasing -- with respect to Deneso Corporation

all right. But you are taking much too long on nonessentials. Will you move along faster?

MR. SEIDMAN: Yes.

(In open court.)

THE COURT: I'm sorry. I would have suggested a recess, except we started so late this morning --

(Question read.)

THE COURT: You will have to specify which meeting, because I think Mr. Naiman has indicated a number of meetings.

Q How many meetings were there in Mr. Ezrine's office with respect to Manor Nursing Centres, Inc., if you recall, Mr. Naiman?

A From the time after our office until the conclusion, I would say 20. A number of meetings.

THE COURT: When you said the conclusion, are you talking about April of 1970, or are you talking up to February 20, 1970?

MR. SEIDMAN: I may have generated a problem here, your Honor, by my question; of course, I have no objection to the answer standing.

THE COURT: Then just go ahead and ask the next question.

Q With respect to the events that took place up

to and including March 1 -- February 20, 1970 --

THE COURT: The closing, in other words.

Q -- the closing, how many times did you visit Mr. Ezrine's office?

A To the best of my recollection, four or five. Maybe six times.

Q And is it so that you visited Mr. Ezrine's office, up to and including February 20, 1970, in those four or five or six times that you state, were there times that you were alone in a room with Mr. Ezrine?

A To the best of my recollection, no.

Q You weren't.

Were there times that you were in a room with Mr. Ezrine and others, when Mr. Feinberg wasn't there, up to that date?

A Yes, I would say that there were times when Mr. Feinberg wasn't there.

Q Wasn't there?

A Yes, sir.

Q And during the times that Mr. Feinberg wasn't there, did you discuss with Mr. Ezrine what Deneso Corporation's relationship would be with respect to the Manor Nursing Centres stock purchase from Benjamin Werner are?

A Yes.

Q So therefore you had discussions with Mr. Ezrine and others concerning the purchase by Deneso of Manor Nursing Centre stock prior to February 20, 1970, when Mr. Feinberg wasn't there?

A Yes, sir.

Q Would it be difficult for you to estimate what periods of time you spent with Mr. Ezrine when Mr. Feinberg wasn't there, with respect to any time prior to February 20, 1970, Mr. Naiman?

A In terms of hours or in terms of days --

Q Terms of time.

A I don't understand the question.

THE COURT: Whatever way you wish to measure it.

Q Whatever way you wish to measure it.

A I would say that Mr. Feinberg was there for a third of the time.

Q One third. So therefore two-thirds of the time Mr. Feinberg -- approximating it, two-thirds of the time, Mr. Feinberg wasn't there, is that --

A To the best of my estimation.

Q You feel comfortable with the estimate.

While the Manor Nursing Centre transaction was

Q Were you to receive $5,250 --

MR. WILSON: He has the number wrong, so I will let the witness answer it.

MR. SEIDMAN: I will stand corrected. You can supply me with the correct number, Mr. Wilson.

MR. WILSON: He has already testified to it, Mr. Seidman.

Q Were you to receive $55,000 from that Ivanhoe transaction?

THE COURT: You mean Deneso.

Q Deneso, yes.

A To the best of my recollection, the deal was that if we placed it primarily with a banking institution we were to receive $40,000.

MR. SCHWELLER: Your Honor, may I clarify who "we" is?

THE WITNESS: Deneso Corporation.

MR. SCHWELLER: Not you personally?

THE WITNESS: No, sir.

MR. SCHWELLER: All right.

Q Did there come a time that you on behalf of Deneso Corporation finalized your agreement with Mr. Ezrine concerning what your participation would be in the Manor Nursing Centres, Inc. stock purchase from Benjamin Werner?

A Several times.

Q Will you tell us the first time what you and Mr. Ezrine agreed to?

A The first time we agreed to purchase 50,000 shares of stock --

Q When you say we --

A I mean the Deneso Corporation agreed to purchase 50,000 shares of stock by arranging a loan with the bank, whereby we would pledge the 50,000 shares of stock, the Manor Nursing Home would enter a regular drawing -- a regular checking account in the amount of $100,000 and that Manor Nursing Centres would purchase a certificate of deposit for $350,000 and that our fee --

Q That's what he agreed to --

MR. WILSON: Let him finish.

MR. SEIDMAN: Absolutely, let him finish, Mr. Wilson.

THE COURT: Have you finished or is there something further?

THE WITNESS: And our fee --

THE COURT: Your fee --

THE WITNESS: Deneso's fee would be the difference between shares purchased at 10 and sold at 12, and for which we would then have to pay the interest for the

loan for as long as the loan was in the bank.

Q And you agreed to this with Mr. Ezrine, is that correct?

A Well, it was my understanding that it was --

Q It was your understanding, go ahead.

A It was our understanding that we had agreed with Mr. Ezrine and Mr. Feinberg to this transaction.

THE COURT: Actually the transaction was to take place between Deneso and Manor Nursing or Werner, as the case may be, right?

THE WITNESS: Yes, sir.

Q Is it possible that this discussion was had with Mr. Ezrine at a time when Mr. Feinberg wasn't present in those two-thirds of the time that he may not have been present? Is that possible?

A In entirety?

Q Is it possible?

THE COURT: Well, I don't want to know if it is possible. What does he recall?

Q Do you have any independent recollection with respect to that particular meeting as to whether or not Mr. Feinberg was present when you had this discussion as to what you would do with respect to the 50,000 shares?

THE COURT: You mean at the meeting at which these

terms were finalized.

MR. SEIDMAN: Correct.

THE COURT: Because there were obviously a number of meetings.

MR. SEIDMAN: Right.

Q At that particular meeting: Do you have an independent recollection of that meeting?

MR. WILSON: I think we have to know exactly which meeting he is talking about.

THE COURT: Gentlemen. I am going to put the question to the witness, because I don't see any way to solve this constant problem with your bickering with each other.

MR. SEIDMAN: I'm not bickering, your Honor, I am just asking the questions.

THE COURT: Yes, you are, and now you are bickering with me.

MR. SEIDMAN: I apologize.

THE COURT: Do you have an independent recollection of whether Mr. Feinberg was present at the meeting at which you finalized the terms for the first time?

THE WITNESS: May I ask you a question, sir?

THE COURT: Yes.

THE WITNESS: The key word being "finalized"?

You mean at the signing of the document or when the terms were agreed?

THE COURT: When the terms were agreed.

THE WITNESS: To the best of my recollection, the answer would be that both were present, but I am not certain. To the best of my recollection.

THE COURT: That's a very fair answer and complete answer.

MR. SEIDMAN: You are not certain.

THE COURT: We will recess for lunch and reconvene at 2:00 o'clock.

(Luncheon recess.)

AFTERNOON SESSION

[2:00 p.m.]

[In the robing room.]

MR. WILSON: The Government has an application, your Honor. We have brought up from Florida a witness who has some business problems. He came up today thinking that he was going to get on today. I am now convinced that that is not going to happen.

I have two requests. With the Court's permission, we would like to interrupt the proceeding and put this witness on.

THE COURT: How long is his testimony going to take?

MR. WILSON: Fifteen or twenty minutes on direct. It is Mr. Orlins.

MR. SEIDMAN: I told you I was prepared to stipulate his testimony.

MR. WILSON: You won't stipulate to what he is going to testify.

MR. SCHWELLER: Does it concern Delmonico?

MR. WILSON: No.

MR. SEIDMAN: I do not know what he is going to testify.

THE COURT: Can't you tell us now what he is

than that in court with the jury here. That much I have already said to the jury and they know it, of course.

If you are still here later on when we take a recess, I would be glad to see all of you in the robing room and talk to you further.

All right, Mr. Seidman.

Q Mr. Naiman, when you visited Mr. Ivan Ezrine's office in New York, did you happen to notice whether or not he had in one of the rooms a series of plaques, each of which was the front page of a prospectus?

A I recall them.

Q And I show you Government Exhibit No. 11 and ask you whether or not these plaques, with different words, were similar to the front page of Government Exhibit 11.

A At that time, yes.

Q How many front page plaques of prospectuses do you estimate he had lining his walls, if you can approximate?

A I would hazard a guess, ten or twelve.

Q After the first meeting with Mr. Ezrine that you had on behalf of Denesco, did there come a time that there was a second meeting concerning your purchase of the Manor Nursing Center, Inc. stock from the underwriter, Benjamin Werner?

A Yes, sir.

Q If you remember, would you be kind enough to tell the judge and the jury where that meeting took place?

THE COURT: I think Mr. Naiman said earlier today he can't remember the precise chronology of the meetings. He can only remember that there were a certain number of meetings or approximately a certain number of meetings.

MR. SEIDMAN: Can I rephrase the question?

Q Did any of those subsequent meetings take place in the office of Ivan Ezrine?

A Yes, sir.

Q And at those subsequent meetings or meeting -- you cannot differentiate the meetings in your mind; is that it, Mr. Naiman?

A That is correct.

THE COURT: You have said, I believe, Mr. Naiman, that you remember about five or six or that there were about five or six meetings in Mr. Ezrine's office before the closing.

THE WITNESS: Yes.

Q However,you cannot differentiate in your mind out of independent recollection where those subsequent meetings were; is that right?

MR. WILSON: I will object to that.

THE COURT: He said five or six of them he can remember were at Ezrine's office.

Is that right?

THE WITNESS: Yes, sir.

Q Did they take place in the room that had all of these prospectus plaques on its walls?

MR. WILSON: Objection; irrelevant.

THE COURT: Overruled.

A I don't recall where -- I know that I saw the plaques, but I don't recall where they were, whether it was the anteroom before you came into his office, in his lobby --

Q How about his innersanctum that you referred to?

MR. WILSON: Objection.

A I don't recall where they were.

THE COURT: The witness doesn't recall what part of the office they were in.

MR. SEIDMAN: All right.

Q Did there come a time that you and Mr. Ezrine finalized the agreement on behalf of Denesco Corporation?

MR. WILSON: Objection.

THE COURT: You asked that before lunch and he said there were several such times and he testified

about one such time.

MR. SEIDMAN: I sought to go to the next meeting, your Honor, to take this chronologically. If the witness cannot differentiate when those conversations took place, then I have to somehow get to the end point of whether, and I must assume maybe --

THE COURT: You mean the last finalization?

MR. SEIDMAN: Any terminology that will make sense.

THE COURT: I am just trying to phrase questions for him which are consistent with the answers he has given so far.

MR. SEIDMAN: So am I, your Honor.

MR. WILSON: It might help --

THE COURT: Just a minute. I will put the following question and if you find it not what you want, let me know.

You have testified that there was one meeting at which you "finalized" the arrangements for the purchase of the stock by Denesco. I take it that what Mr. Seidman wishes to ask you is whether there came a time when the last such finalization occurred.

Q In other words, was there a last meeting where Denesco Corporation, represented by you, and Manor Nursing

Centers, represented by Mr. Ezrine, reached an understanding whereby it was understood what Denesco proposed to do?

A Yes, sir.

Q What did you say to Mr. Ezrine and what did he say to you?

MR. WILSON: Can we find out who else was there, if anyone?

MR. SEIDMAN: If your Honor please, I'll bring that out, but I believe that is an improper interruption.

THE COURT: Yes, I prefer not to have any interruptions. You can find that out on redirect, that is, who else was there.

MR. SEIDMAN: If anyone, and it is not for Mr. Wilson to suggest that there were other people.

MR. WILSON: It is all in evidence already.

THE COURT: Gentlemen, really, even in front of the school children.

MR. WILSON: I'm sorry, your Honor. You are absolutely right.

MR. SEIDMAN: He may be right as to you, Mr. Wilson.

Q Mr. Naiman, what did Mr. Ezrine say to you and what did you say to him, if you recall, at the last and "final meeting" with respect to what it was understood

Denesco Corporation intended to do with respect to its purchase of Manor Nursing Center stock from Benjamin Werner, the underwriter?

A The last agreement that I recall was an agreement whereby Denesco Corporation would purchase 110,000 shares of stock for a million, one hundred thousand dollars and a formal agreement was drawn and, to the best of my recollection it was done in Mr. Ezrine's office. I'm not positive, but I think it was, and it was --

THE COURT: You mean the paper was drawn in Mr. Ezrine's office?

THE WITNESS: Yes.

MR. SEIDMAN: Just speak up a little bit because the windows are open.

A To the best of my recollection on or about the 17th of February a formal agreement was reached and a document drawn and to the best of my knowledge it was that composed by or written by Mr. Ezrine with my compliance.

THE COURT: Do you remember whether anybody else was present at that meeting?

THE WITNESS: I can't definitely answer that question.

MR. SEIDMAN: Thank you, your Honor.

Q Do you know who has that agreement today that was prepared by Mr. Ezrine with respect to the particular meeting that you have just testified to?

THE COURT: You mean the original of it?

MR. SEIDMAN: The original or a copy.

THE COURT: I think a copy is in evidence.

A Yes, sir.

MR. WILSON: The original is in evidence.

THE COURT: Will you show it to the witness and ask him if that is what he is talking about? What number is it?

Q Mr. Naiman, I show you Government Exhibit No. 41 and ask you whether or not this is the agreement that your prior testimony has reference to, and I would ask you to examine all of it. Do you recall that?

A Yes.

Q Is that the agreement or is it possible there was another agreement?

A There was another one prior to this which related to the purchase of 50,000 shares of stock.

Q Was that also prepared by Mr. Ezrine ?

A I know that he -- he aided in its preparation and it is my recollection that that agreement was on Glendale -- that it was written by Glendale to Denesco

Corporation.

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Q If you know, could you tell us whether or not Mr. Ezrine told you who Glendale or what Glendale, Inc. was?

A Glendale, Inc. is disclosed in the prospectus.

Q As being what, if you know?

A A selling stockholder.

Q Who was the principal of Glendale, if you know?

A Mr. Ezrine signed for Glendale.

Q By Mr. Ezrine you mean Mr. Ivan A. Ezrine; is that correct?

A That is correct.

THE COURT: You mean the Ezrine that is talked about through all the record.

MR. SEIDMAN: Thank you, your Honor.

Q Mr. Naiman, would it be correct to state that you may have made a mistake in your prior testimony as to from whom the Denesco Corporation was purchasing the Manor Nursing Center, Inc. stock, as to whether or not it was Benjamin Werner or whether or not you were purchasing it from a corporation by the name of Glendale, Inc. which you have previously identified in your own mind as being a corporation belonging to Ivan Ezrine?

THE COURT: That is not correct. The witness

said Mr. Ezrine signed for Glendale, Inc. That is all he said.

Q Do you know in what capacity he signed for Glendale, Inc.?

THE COURT: The exhibit is in evidence.

MR. SEIDMAN: I will straighten that out in a second, if I can get that prospectus, your Honor.

MR. SCHWELLER: Here it is.

THE COURT: That won't indicate it.

3pm MR. SEIDMAN: Yes, it will. There is a statement in here that I believe will.

MR. WILSON: I will stipulate.

MR. SEIDMAN: You need not stipulate unless you want to stipulate that Glendale is Ivan Ezrine.

THE COURT: No, I won't allow the Government to stipulate that. I'm not saying it isn't so, but I'm just saying that the facts should be properly put in.

MR. SEIDMAN: Thank you, your Honor.

MR. WILSON: The Government will stipulate that Glendale, Inc. is a corporation, the stock of which was held 100% by Sarah Ezrine, the wife of Ivan Ezrine. In fact, it is on page 22 of the prospectus.

MR. SEIDMAN: That is the reason I mentioned Ivan A. Ezrine.

THE COURT: That is different than saying that the witness said that.

The question,as I recall, was whether Mr. Naiman was mistaken in saying that Denesco had agreed to buy the stock from Werner rather than from Glendale. Were you mistaken?

THE WITNESS: We were always buying it from Werner, to the best of my recollection and knowledge, because it was an all or nothing offering.

Q Is that what you recall Mr. Ezrine saying to you, that you were purchasing it from Benjamin Werner, the underwriter?

A That was my original -- from the very, very first, that it was part of the subscription necessary to complete the offering.

Q Had you ever had any prior business dealings with Benjamin Werner, the underwriter?

A No, sir.

Q Do you know of your own knowledge whether or not Ivan A. Ezrine had previously either had any business dealings with Benjamin Werner or had represented Benjamin Werner as an attorney in underwriting unrelated to the Manor Nursing Center deal?

A Specifically I do not know this.

the witness' state of mind. You can ask him what he told somebody else, if that is relevant, particularly the people you are interested in. Maybe that is relevant to their state of mind, which is in issue here.

Q Did you indicate to Mr. Delmonico on or about February 20, 1970 that you hoped and expected that you would be able to have funds on deposit at the Garfield Trust Company Bank by the time the checks came through?

A Yes, sir.

Q Did you at any time tell anybody else involved in this transaction at the time that you were saying this to Mr. Delmonico anything to the contrary?

A No, sir.

Q Did you at any time have any conversation with Mr. Feinberg whereby you advised him that you would not be able to cover these checks with respect to a conversation that takes place on February 20?

THE COURT: You mean did he ever tell that to Mr. Feinberg on February 20th?

Q That the checks were no good.

A No, I did not speak to Mr. Feinberg.

Q On the 20th?

A On February 20th.

THE COURT: Ladies and gentlemen, we will take

I am instructing you to disregard that testimony because I have ruled it has nothing to do with the case.

MR. SEIDMAN: I have an objection.

MR. SCHWELLER: Thank you, your Honor.

Q Mr. Naiman, you had previously testified, and it was yesterday, that on February 24 you had informed Mr. Feinberg, Mr. Ezrine and whoever else was present that you were having difficulty raising the money, is that correct, to make the checks good?

A Yes, sir.

Q However, at that point in time you did not tell him that you would be unable to get the money; is that correct?

A That is correct.

Q Did there come a time thereafter that you had a conversation with Mr. Ezrine in his office whereby Mr. Ezrine stated to you that if you could not make the checks good he would be able to sell the stock elsewhere?

A I don't recall that. I don't recall that as the meat of a discussion.

Q Was it a part of a discussion?

THE COURT: Did he say it to you or didn't he?

THE WITNESS: No.

Q Did Mr. Ezrine at any time inform you that he

the Denesco position; is that correct? 239a

MR. WILSON: Objection.

THE COURT: Sustained.

Q Other than Mr. Selig in Philadelphia, Pennsylvania, do you know what other people Mr. Ezrine sought to contact in order to sell the Denesco position with respect to the stock?

A Mr. Ezrine accompanied Mr. Delmonico and I for a meeting with a man whose name I don't recall and the position was explained to this man, who declined the proposition.

Q Did you go to any other meetings with Mr. Ezrine to other prospective purchasers, if you recall?

A No, I did not go with Mr. Ezrine to any other --

Q Isn't it a fact that on all those occasions that you have just testified to Mr. Feinberg was not present when the conversation was had via telephone with Mr. Selig or the other gentlemen you visited with Mr. Ezrine, whatever his name?

A Mr. Feinberg did not go with us to the other man. I don't know if he was present when we discussed the puts with Mr. Selig.

Q You don't know whether he was or was not there?

A That is correct.

Q Did there come a time when you left the whole matter of what was to happen to Denesco's position as to the Manor Nursing Home stock in the hands of Ivan Ezrine?

A I don't quite understand you, sir.

Q After you had sought or after Mr. Ezrine with you had sought to get new purchases or purchasers for the Denesco position, did there come a time that you ceased to do anything with respect to selling the Denesco position, if you know, and Mr. Ezrine said that he would seek to sell the Denesco position or take care of selling it, in words or substance?

A I don't know that Mr. Ezrine ever stated that he would do that. I know that he had asked for the return of the stock and I know that Mr. Delmonico returned the stock and --

Q And that was returned to Mr. Ezrine; is that correct?

A That is correct.

Q And you do not know what happened thereafter, is that a fair statement, once the stock was returned to Mr. Ezrine?

THE COURT: He does not know what happened with regard to the stock.

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Q Is that correct?

A That is correct, I don't know what happened with regard to the stock.

Q And that would be the end of Mr. Ezrine's concern, interest or involvement in the Denesco purchase or attempted purchase of the Manor Nursing Center stock; is that correct.

A No. I met with Mr. Feinberg after that, subsequent to that.

Q Did you tell him at that point that you had returned the stock to Mr. Ezrine?

A I discussed the means by which I thought I could raise sufficient money to take a position in that stock.

THE COURT: When was that?

THE WITNESS: Very late in March or early in April.

Q But you were still seeking to purchase or make good Deneso's position, is that correct?

A I was hopeful that I could do something, yes.

Q And you so indicated to Mr. Feinberg, is that correct?

A Yes, sir.

Q Do you know whether or not that statement to Mr. Feinberg was made before or after the return of the Deneso stock?

A After the return of the stock.

Q And you still felt that you had a moral obligation, because you had represented certain things to Mr. Feinberg that Deneso was in truth and in fact going to purchase and pay for the stock of Manor Nursing Centres?

MR. WILSON: Objection.

THE COURT: Sustained.

Q But there is no doubt in your mind, Mr. Naiman --

MR. WILSON: Objection. In his mind --

THE COURT: In his own mind?

MR. WILSON: In his mind. He just started to

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question him th & way.

THE COURT: He can ask the witness whether there is any doubt in the witness' mind.

MR. WILSON: I am sorry. I withdraw the objection.

THE COURT: There is no doubt in his mind what, Mr. Seidman?

Q There is no doubt in your mind Mr. Naiman, that you or someone on behalf of Deneso returned the Manor Nursing Centres stock to Mr. Ezrine?

A I am certain that Mr. Delmonico returned the stock.

THE COURT: Are you coming close to the conclusion Mr. Seidman?

MR. SEIDMAN: Yes, I am, your Honor.

Q And isn't it a fact, Mr. Naiman, that at all times you indicated to Mr. Ezrine and the other people in this deal or transaction or agreement that you hoped and expected to be able to make the checks of Deneso good until the time that you told them you couldn't?

MR. WILSON: It has been asked and answered.

THE COURT: It's been answered many times, but I will allow it once more, this time.

A Yes, sir.

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THE COURT: Yes, there has been no redirect or even cross examination by Mr. Schweller that has anything to do with Benjamin Werner.

MR. SEIDMAN: Am I precluded from asking that question?

THE COURT: On recross, yes.

MR. SEIDMAN: Very well.

THE COURT: All right. Thank you very much, Mr. Naiman, you are excused as a witness.

(Witness excused.)

MR. HOSKINS: Your Honor, the Government calls Bernard Orlins.

B E R N A R D O R L I N S, a witness called by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOSKINS:

THE COURT: Mr. Orlins, will you keep up your voice so every member of the jury can hear what you have to say, please?

Q Mr. Orlins, what do you do for a living?

A I am an associate publisher of a TV magazine.

Q Where is that?

A That's in Miami, Florida.

Q Directing your attention to 1969 and 1970, what did you do for a living at that time?

A I was a partner in a printing and direct mail company.

Q What was the name of that company?

A The name of that company was Media Graphics.

Q And where were you living and working at that time?

A I was living in Paramus, New Jersey, and I was working then in Little Ferry, New Jersey.

Q Do you know Ira Feinberg?

A Yes, I do.

Q Do you see him in court today?

A Yes, I do.

Q Would you identify him for the record?

A He is sitting in the blue suit and grey tie.

MR. HOSKINS: Indicating Mr. Feinberg.

Q Since what time have you known Mr. Feinberg?

A I have known Mr. Feinberg since 1963.

Q During the periof of 1969 and '70, how would you describe your relationship with Mr. Feinberg?

A Well, I would say we were good friends.

Q Did there come a time in 1969 or '70 when you

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became aware that Manor Nursing Centres, Inc. was engaged in a public offering of stock?

A Yes. I did.

Q When was that?

A I would say it was probably around the spring of 1969 or maybe a little earlier -- a little later.

Q How did you become aware?

A Well, Mr. Feinberg told me that he was preparing to take the Manor Nursing home, which he then owned, and to bring it public, in a public offering for stock.

Q Did you thereafter discuss the Manor Nursing public offering with Mr. Feinberg?

A Well, we discussed it on numerous occasions, yes, we did.

Q Did Mr. Feinberg ever ask you to buy the stock in Manor Nursing Centres, Inc.?

MR. SEIDMAN: I object to the form of the question, your HOnor.

A Would you mind repeating the question?

Q Did Mr. Feinberg ever ask you to buy any stock in Manor?

A No, he never did.

Q And did you ever buy any?

A No, I never bought any.

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Q Did you own any stock in other companies at that time?

A Yes, I did.

Q Approximately how many, do you know?

A I would say maybe half a dozen.

Q Did there come a time when you received something in the mail pertaining to Manor Nursing Centres?

A Yes, I did.

Q When was that?

A That was -- I think it was about March of 1970. I received in the mail two confirmations indicating that I had purchased or stock was purchased for me, in the amount of about 6,000 shares, in Manor Nursing Centres and --

Q Did there come a -- I'm sorry. Go ahead.

A And I was about to say, a few weeks later, I don't know exactly how long, I received a third confirmation, indicating that the total now would be 12,000 shares.

THE COURT: In other words, 6,000 more than in the first confirmation.

THE WITNESS: Yes.

Q Mr. Orlins, I show you Government's Exhibit 51 and ask you if you can identify it?

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A Yes. These are the confirmations that came in the mail.

Q That you just testified about?

A Yes. The two and then the one.

MR. HOSKINS: The Government offers 51.

THE COURT: Are there any objections?

MR. SEIDMAN: I have no objection.

MR. SCHWELLER: No.

(Government's Exhibit 51 for identification received in evidence.)

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Q When you received the first two confirmations of Government's Exhibit 51, what if anything did you do?

A I guess the first thing I did was to register surprise, but then I called Mr. Feinberg and asked him, you know. ti explain, what is this? And he told me that because Manor Nursing Centres was the -- the stock offering was an all-or-nothing situation, in other words, that all of the stock had to be sold or else it was a no go deal, that they had some difficulty at the closing, and he did buy 12,000 shares in my name, to help that closing, in order to effect the eventual stock issue, the offering, and would I hold them for him, which of course I would do, because, as I say, we were friends, and he also said that if there was any --at any later date when the stock

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was to be sold or it was sold, if there was any profit, that I would of course be able to keep the profit, after returning to him of course the amount paid for the stock.

Q You mean ten dollars a share?

A Whatever it was. Yes. Ten dollars a share, yes. And if there was any loss on the stock I would not be liable or responsible for any loss, and all the monies lost from the sale would of course accrue to him on the sale of the stock.

Q What else did he say, if you recall?

A Well, he said because I was, you know, a little annoyed -- I don't know what the right word is -- but to assure me that everything was fine, and we were friends. He told me he had bought some stock also for another friend, Mr. Sheldon. We were also good friends.

Q You knew Mr. Sheldon?

A Yes.

Q You said that at the time I believe you worked for Media Graphics. What kind of company was that?

A It was a printing company and direct mail advertising company.

Q Did there come a time when you and Mr. Feinberg discussed Media Graphics?

A Well, yes. There were several times.

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(In open court:)

MR. WILSON: Your Honor, I think my problem is the heat.

THE COURT: All right. Let's go ahead.

BY MR. HOSKINS:

Q Mr. Orlins, will you tell us what discussions you and Mr. Feinberg had with respect to the possible purchase of Media Graphics by him?

A Yes. As I said, there were discussions that continued over a period of time, and eventually we did have a meeting between Mr. Feinberg and myself and my then partner and discussed the eventual buy-out of Media Graphics & Printing Company.

THE COURT: By whom?

THE WITNESS: By Manor Nursing Centers.

A (Continuing) And we then proceeded into that discussion, and the accountants came in, lawyers, and they did whatever they do, and they went through our books, and they made us a formal proposal, which we in turn rejected, and that was the end of that.

Q Mr. Orlins, do you know a man named Ronald Klim?

A Yes; I do.

Q Who is he?

MR. SEIDMAN: If your Honor please, I object to the

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form of the question.

THE COURT: You mean the question, "Who is he?"

MR. SEIDMAN: Yes. I assume he is Ronald Klim, a man.

THE COURT: Well, I wouldn't be too sure about that, Mr. Seidman.

MR. SEIDMAN: That may not be correct, and I stand corrected.

MR. HOSKINS: I will rephrase the question.

THE COURT: No.

(To the witness:) Who is Ronald Klim?

THE WITNESS: I will try to explain to you as best I can. It won't be easy. Ronald Klim is the -- my wife's sister's husband's brother-in-law, or my brother-in-law -- I don't know how --

THE COURT: He is your wife's sister's husband's brother-in-law. The brother-in-law of your wife's sister's husband?

THE WITNESS: Right. Okay. I said it wouldn't be easy.

THE COURT: How many people are at your home for Chanukah or Christmas? Do you go as far as to have your wife's sister's husband's brother-in-law?

THE WITNESS: Sure.

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THE COURT: All right. Let's proceed.

Q If you know, did Mr. Klim know Mr. Feinberg?

MR. SEIDMAN: If your Honor please, that is hearsay.

THE COURT: If he saw them together --

MR. SEIDMAN: That doesn't mean Mr. Klim knew Mr. Feinberg.

THE COURT: I will leave that up to the jury to decide. You can cross-examine the witness as to the extent of his knowledge.

Q Did Mr. Klim know Mr. Feinberg?

A Yes.

THE COURT: How do you know?

THE WITNESS: I introduced them.

MR. SEIDMAN: That makes sense. Maybe that should have been the first question.

Q What was Mr. Klim's business relationship, if any, with Mr. Feinberg during the period of 1969 and 1970?

THE COURT: If you know.

Q (Continuing) If you know.

A Well, I know that during that period Mr. Klin was a stockbroker, and I know that he did handle some stock transactions for Mr. Feinberg.

MR. SEIDMAN: If your Honor please, I don't have

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any objection to this, but I, just as a lawyer, have to object as to materiality, relevancy and what this has to do with the case.

THE COURT: You have a continuing objection to this line, and the objection is overruled.

Q Do you know if he sold Manor stock for Mr. Feinberg?

A Yes; I do.

Q He did?

A He did.

THE COURT: How do you know that?

THE WITNESS: Both Mr. Feinberg and Mr. Klim told me.

THE COURT: All right.

Q Mr. Orlins, you said that you and Mr. Feinberg were good friends in '69 and '70. Did you have occasion to be in Mr. Feinberg's office from time to time during that period?

A Oh, yes. On many occasions.

Q During those occasions, did you ever have occasion to discuss stocks and securities with him?

A Well, yes. That was always a continuing discussion, because that was Mr. Feinberg's -- that was his line of work, and we were friends, and we would talk about it quite often, and he would tell me about his proposed stock offerings and public issues that were coming out and how it worked and the SEC regulations and the accounting practices

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and things of that nature, general knowledge of -- of stock.

Q Specifically, directing your attention to the spring of 1969, do you recall having discussions with Mr. Feinberg at that time on this subject?

MR. SEIDMAN: I object, your Honor.

THE COURT: On the general subject or on the subject of Manor Nursing?

MR. HOSKINS: On the subject of stocks and securities.

THE WITNESS: In 1969 --

THE COURT: In the spring of 1969. I will allow it.

A In 1969, I believe then -- I believe then Capital Cities Nursing Centers was being put forth for a public issue. Yes; we discussed that, if that's the one.

MR. SEIDMAN: What do you mean, if that's the one?

THE COURT: Yes. If you don't recall --

THE WITNESS: All right. We spoke about --

THE COURT: Please be seated, Mr. Seidman.

THE WITNESS: We spoke about the difference between Capital Cities, which is a Regulation A, I think it was, a Regulation A offering, which is a limited offering and in a certain period of time, as opposed to what Manor was, which was a whole all-or-nothing, which was an entirely different situation, and the various rules and regulations concerning

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that. 255a

Q Now, how was Mr. Feinberg's office furnished, if you recall?

A Well, it wasn't -- It was a small office. It wasn't a large office. It had a desk --

MR. SEIDMAN: It wasn't sumptuous -- Excuse me.

THE COURT: If the jury heard Mr. Seidman's remark, which I can't believe they did not, they will disregard it.

A (Continuing) It was a small office. It wasn't overly large. It had a desk; it had a sideboard alongside the desk that had some files underneath it; a couple of chairs and a wall shelf back of the front wall which contained books and papers and office supplies and whateveryou find in an office.

Q What publications, if you recall, did you see in his office?

A Publications? You mean like --

Q Books and so forth.

A Well, of course, there was always the Wall Street Journal, and there were publications and pamphlets on accounting practices, because, as I said, Mr. Feinberg did -- that was his line of work. He delved into accounting very thoroughly. Books on nursing home management or operation. There were SEC pamphlets and regulations, you know, regulation pamphlets concerning SEC. Things of that nature.

Q Today, in 1974, are you and Mr. Feinberg still close friends?

A No; I am afraid we aren't.

Q How many times prior to today have you spoken to either Mr. Wilson of the U. S. Attorney's office or me?

A Well, two times. Two times.

THE COURT: And whom have you spoken to?

THE WITNESS: I have spoken to Mr. Wilson, I think back in February, of course, and Mr. Hoskins just a few weeks ago.

Q One final question, Mr. Orlins. Taking you back to Ronald Klim, do you recall what brokerage house he worked for?

A I think at that time it was Charles Plohn & Co.

MR. HOSKINS: No further questions.

MR. SEIDMAN: If your Honor please, for the record I move for a mistrial.

THE COURT: I suppose for the record I had better deny it.

MR. SEIDMAN: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. SEIDMAN:

Q Mr. Orlins, my name is Irving P. Seidman. I am Ira Feinberg's attorney in this matter. You have never spoken

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MR. SEIDMAN: It would go to the state of mind, your Honor, and I believe it would be material.

THE COURT: There is a way of having somebody testify without producing the witness.

MR. SEIDMAN: I object, your Honor.

Q However, you did celebrate a closing of the stock, is that correct, that night?

A That is correct.

Q Mr. Feinberg did not tell you on the evening of February the 20th, 1970 that the stock did not close successfully?

THE COURT: Sustained.

Q When you negotiated the deal of the purported or the proposed purchase by Manor Nursing Centers of Mediagraphics, were you represented by an attorney?

A Would you mind repeating that question?

MR. SEIDMAN: Not at all.

[Question read.]

A No, not to my knowledge.

THE COURT: You would have known.

THE WITNESS: Yes.

Q Did you testify just about ten minutes ago that the lawyers and accountants for both Mediagraphics and Manor Nursing Centers worked on the papers?

Q Did Mr. Feinberg ever ask you to pay for the stock?

A No, he never asked me to pay for the stock.

Q Did you in fact ever pay for that stock?

A No.

Q At your meetings with Mr. Feinberg prior to February 20, 1970, did Mr. Feinberg inform you as to whether or not he had retained special counsel for purposes of this public offering?

MR. WILSON: Objection, outside --

THE COURT: Sustained.

Q From your own independent knowledge, do you know whether or not Mr. Feinberg had retained special counsel for purposes of putting Manor Nursing Centers, Inc. public?

MR. WILSON: Object.

THE COURT: On what grounds?

MR. WILSON: Outside the scope of the direct examination and --

THE COURT: I sustain the objection on that ground.

MR. SEIDMAN: I believe it is within the scope of the direct examination, if anything, inasmuch as Mr. Hoskins and Mr. Wilson have sought to indicate that Mr. Feinberg took care of all of these securities matters on

indicate in no way my view about the merits of the case. But because there has been so much back and forth in the courtroom in this case I thought that I should be sure that you understood at this time so that there is no misunderstanding. If I rule against Mr. Wilson, that doesn't mean that I favor the other side. If I rule against Mr. Seidman, that doesn't mean that I favor the Government. My job is to try and see to it that the evidence comes into this case in an orderly way in accordance with the rules and to try and to see to it that you understand the facts of the case as thoroughly as possible so that when the time comes you are able to make a just and proper disposition.

MR. WILSON: Your Honor, the Government calls Benjamin Werner.

B E N J A M I N W E R N E R, called as a witness in behalf of the Government, after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WILSON:

Q Mr. Werner, where do you live?

A 1430 Sea Girt Boulevard, Far Rockaway.

Q How old are you, sir?

A 57.

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Q Do you have any children?

A One married daughter.

Q Mr. Werner, you pleaded guilty to your participation in the public offering of Manor Nursing Centers as charged in the conspiracy count in this indictment that is on trial; is that right?

A That is correct.

Q Have you been sentenced yet?

A Not yet.

Q Who is going to sentence you?

A Justice Lasker.

Q When do you believe you will be sentenced?

A After the trial is over.

Q Mr. Werner, in 1968, 1969 and 1970 what were you doing; what was your employment?

A I was a broker as a sole proprietor in the name of Benjamin Werner Company.

Q Did you have any employees?

A I had approximately three employees.

Q Who were they?

A My wife, a part-time bookkeeper and messenger.

Q Did you have an office?

A I did.

Q Where was the office?

A At 15 Rector Street, New York City.

Q Would you describe the office for us, big, small?

A It was a two-room, small office.

Q How much rent did you pay for that office?

A Approximately $200 a month.

Q How long did you have this company, this sole proprietorship?

A Approximately ten years.

Q Mr. Werner, do you know an Ivan Ezrine?

A Yes, I do.

Q How long have you known Mr. Ezrine?

A Approximately 15 years.

Q Would you tell the jury in general what your relationship with him was over that 15-year period?

A The relationship was one of my biggest clients, my attorney and my friend.

THE COURT: You mean he was a client of yours?

THE WITNESS: That is correct.

THE COURT: And you were a client of his as an attorney?

THE WITNESS: That is correct.

THE COURT: That is, he being the attorney?

THE WITNESS: That is correct.

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THE COURT: And you being good friends?

THE WITNESS: That is correct.

Q Will you tell us what he did for you during this period of time, if anything?

A He has recommended many, many customers. He has given me lots of business.

THE COURT: Okay.

Q Do you know a Mr. Feinberg?

A I do.

Q When did you first meet Mr. Feinberg?

A I met him in 1968, I think.

Q Do you see Mr. Feinberg in the courtroom?

A Yes.

Q Would you indicate where he is sitting?

A [Indicating.]

MR. WILSON: May the record reflect the identification?

THE COURT: Yes.

Q Mr. Werner, between the time that you first met Mr. Feinberg in 1968 and February 20, 1970, how many times did you actually see him and meet with him?

A About two or three times.

Q Total, in that whole period?

A That is right.

Q Mr. Werner, did you become the underwriter in the public offering of Manor Nursing Centers, Inc.?

A I did.

Q As the underwriter, did you try to sell stock?

A I did.

Q Tell the jury what you did in that regard.

A As an underwriter I was trying to solicit to sell the public offering of Manor Nursing Centers through telephone calls and through word of mouth to various individuals and brokers.

Q What response did you get from your efforts to sell stock?

A The response was very, very bad and very, very slow.

MR. SEIDMAN: I object to the characterization as to what the response was.

THE COURT: I understand your answer generally, Mr. Werner, but can you be more specific, can you be more factual instead of saying bad or good? Can you tell us how many shares you were able to sell or get commitments for or something like that?

THE WITNESS: I was able to get approximately -- you want the amount of shares?

THE COURT: Yes. This is at $10 a share; right?

THE WITNESS: That is correct.

Approximately 30,000 shares of stock.

mprf 2 am 1 Werner-direct

Q By what point in time were you able to sell 30,000 shares of stock?

A From the time the prospectus was issued, December the 8th --

Q Do you recall when the prospectus was --

A No, I don't recall.

THE COURT: Anyway, from the time the prospectus was issued until when?

THE WITNESS: Until February 20th.

THE COURT: All right.

Q During the period when you were trying to sell the stock, from the beginning, until February 20, 1970, did you talk to Mr. Ezrine about your sale efforts?

A I spoke to Mr. Ezrine, and I also spoke to Mr. Feinberg.

Q How often did you speak to Mr. Ezrine?

A On a daily basis.

Q In December, January and February, 1970?

A That is correct.

Q Would you tell us what you said to him in the course of those conversations, in that three-month period?

A In the course of conversation he would ask me how is the sponsorship and orders coming on Manor Nursing, and I told him, very, very slowly.

Q As time went on in that three-month period did he tell you anything?

A Yes, he told me that he and Mr. Feinberg would try to solicit --

MR. SEIDMAN: If your Honor please, at this time I am going to object to that part of the conversation as to what Mr. Ezrine told Mr. Werner about Mr. Feinberg.

THE COURT: Overruled.

Q Proceed.

A In the course of the conversation, Mr. Ezrine would ask me how the orders are coming in on Manor Nursing. I told him very, very bad, no sponsorship at all, and I would like to have help from him and Mr. Feinberg in reference to their friends and clients and associates, to try to get me more orders so we can complete this offering.

Q Now, in the same period of time did you ever talk to Mr. Feinberg on the telephone?

A About two or three times.

Q And do you have any real recollection of what you said to him at that time?

A The same thing I asked Mr. Ezrine.

Q Now, let me direct your attention to the period one or two days prior to February 20th. At that time

did you talk to Mr. Ezrine on the telephone?

A I did.

Q And what did he say to you and what did you say to him?

A He told me that the closing will take place on February 20th.

THE COURT: Will?

THE WITNESS: Will take place.

A And I asked him how can it take place when I only sold approximately 30,000 shares. And he told me that at the closing many individuals will be delivering their [illegible]s to Mr. Feinberg and to Mr. Ezrine and I will have sufficient amount of monies to close this public offering.

Q Now, as of the morning of February 20th and the day before, I think you have told us you had approximately $300,000 worth of stock that you had sold, is that right?

A That is correct.

Q Could you break it down for the jury as to where those sales had come from?

A Yes. About 50 -- approximately about $150,000 or $155,000 came from various brokers. Scheinman, Hochstein & Trotta --

Q Is that a brokerage house?

A That is a brokerage house -- bought 10,000 shares for $100,000. Charles Plohn bought 5,000 shares for $50,000 and Burton Davis bought 500 shares for $5,000.

Q And these brokers had sent you their checks prior to February 20th?

A That is correct. And the rest I sold through my clients, about 3,200 shares of stock and individuals that were recommended by Mr. Feinberg and Mr. Ezrine, who sent in their checks, which was another approximately 3,000 shares, or $30,000.

Q Let me show you-- how much did you get in addition to -- let's go back for a moment. Mr. Werner, you got $150,000 from the brokers?

A That is correct.

Q And how much of your own stock did you sell?

A About 3,200 shares.

Q That's $32,000. That is about?

A $182,000.

Q How much was the balance?

A About another $30,000 approximately.

THE COURT: You have left out 5,000 on the first 150. It's 155, 32 and 30, as you said.

THE WITNESS: Yes.

Q Are you sure it was only 30? How much money did

you deliver at the closing, Mr. Werner?

A I delivered to the closing $250,000 and a check for $32,000.

Q Does that refresh your recollection --

A That's about $280,000.

Q And how much had you sold to people other than your own customers and through the brokerage houses?

A About $280,000.

Q Let me show you Government's Exhibit 53 for identification. Can you tell us what happens?

A This is a selling agreement that is sent out to the individual clients to purchase so many shares at $10 a share.

Q Would you look at the whole document. Was that sent to clients or sent to someone else?

A Clients and brokers.

Q Is it sent to clients or just brokers?

A Sent to clients, brokers and their corporations.

Q Do you recognize 53? Was 53 executed by you and a brokerage house?

A This was signed by Scheinman, Hochstein & Trotta, for 10,000 shares of stock.

Q In connection with the Manor Nursing Home?

A In connection with Manor Nursing Home.

MR. WILSON: The Government offers it in evidence.

MR. SCHWELLER: No objection.

MR. SEIDMAN: No objection.

(Government's Exhibit 53 for identification received in evidence.)

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Q Now, Mr. Werner, on the morning of February 20, 1970, did you receive a telephone call from Mr. Ezrine?

A I did.

MR. SEIDMAN: If your Honor please, I object to that type of leading question.

THE COURT: Overruled.

Q Did you receive that telephone call?

A I did.

Q And what did Mr. Ezrine say to you and what did you say to him?

A Mr. Ezrine told me, in order for us to go down to the closing I have to issue certain checks, some to Manor Nursing Centres --

THE COURT: You have to.

THE WITNESS: That's right.

Q As the underwriter, Mr. Werner?

A As the underwriter. Certain checks to Manor Nursing Centres and certain checks to the selling stockholders. I told him that I didn't have the money in my possession,

why should I issue the checks? And he told me that in order to consummate the closing, we have to have those checks, and the checks that I will receive at the closing will offset it.

Q Mr. Werner, I show you what has been marked as Government's Exhibits 54, 55, and 56 for identification.

Could you tell the jury what each one of them is. What is Government's Exhibit 54, the one you have got in your hand?

A These were the checks based on Mr. Ezrine's --

THE COURT: Will you tell us one at a time.

MR. WILSON: I think each stack --

THE COURT: It's a stack. Excuse me. Go ahead.

A These are the checks issued to Manor Nursing Centres on February 20th, which amounts to approximately two million -- 250 -- 282 -- over three million dollars to Manor Nursing Centres for the closing.

Q Do the checks you have in your hand equal three million or is it less than that?

A Let's see. Two million. Two million five hundred. Two million five hundred thirty two. Two million --

THE COURT: Can't you represent what they amount to?

MR. WILSON: Two million eight hundred, I think.

THE COURT: Two million eight hundred thousand dollars approximately.

Q That is Government's Exhibit 54, is that right?

A That's right.

Q And you gave these checks to whom at the closing?

A To Mr. Feinberg.

Q All right. Now, look at Government's Exhibit 55 --

THE COURT: May I ask, before you go to 55.

Who is the maker of those checks, 54?

THE WITNESS: I was.

THE COURT: You mean your company?

THE WITNESS: Yes, as a sole proprietorship.

THE COURT: All right. So you were. And what bank were they drawn on?

THE COURT: Chemical Bank and Trust Company.

THE COURT: Thank you very much.

Q Would you tell us what 55 is, Mr. Werner?

A This check was issued to Manor Nursing in payment of 32,090 shares of stock for my clients. A certified check.

Q Whom was that given to?

A Manor Nursing Centres, Mr. Feinberg.

Q And that check is certified?

A That is correct.

THE COURT: I take it the checks in 54 weren't certified.

THE WITNESS: Right.

Q And 56, Mr. Werner, what is that?

A This check was issued to Manor Nursing Centres in the amount of $250,625 out of my escrow account, then this check was certified.

Q Who got that check?

A Mr. Feinberg.

MR. SEIDMAN: Your Honor, I object to that. It's a matter of who got the check.

THE COURT: To whom did you deliver the check?

A Manor Nursing Centres.

Q And who is the person to whom you gave the check physically, if you know?

MR. SEIDMAN: I object to that.

A Mr. Feinberg.

MR. WILSON: There is no dispute about that.

I offer the checks.

(Government's Exhibits 54, 55 and 56 for identification received in evidence.)

Q Mr. Werner, I show you Government's Exhibit 57 for identification. Will you tell us what that check is?

A This check was issued to Ira Feinberg in the amount

of $559,375 as one of the stockholders. 274a

Q And to whom did you physically deliver that check?

A To Mr. Ira Feinberg.

THE COURT: Payable to him also?

THE WITNESS: That's right.

Q I show you Government's Exhibit 58 for identification. Can you tell us what those checks are? It's a package of three checks.

A Those checks were also issued to selling stockholders.

Q Who are the names on them?

A Samuel Feinberg, $22,375.

Arthur Sutton, $44,750 and Susan --

Q Just tell us the amount.

A $22,375.

Q And to whom did you deliver those checks?

A To Mr. Feinberg.

Q I show you what has been marked as Government's Exhibit 59 for identification.

Can you tell us what those two checks are?

A Yes. The check was issued to Ivan Ezrine as attorney for Atlantic Services, $89,500 and Glendale Corporation for $134,250.

Q Were they also selling stockholders?

A They were selling stockholders and it was delivered to Mr. Ivan Ezrine.

MR. WILSON: The Government issues all the checks, 57, 58, 59 in evidence.

MR. SEIDMAN: No objection.

(Government's Exhibit 57, 58 and 59 for identification received in evidence.)

xx

MR. SEIDMAN: May I state for the record, I don't know if Mr. Wilson has it, but he is missing a check.

Q Was there an additional check, Mr. Werner, issued to selling stockholders in connection with public offering that you have not seen?

A There was.

Q And do you recall whom that was made out to?

A I think -- no, I don't.

Q Does the name Gladys Halpern refresh your recollection at all?

A Yes.

MR. SEIDMAN: Your Honor, I will concede -- all right.

Q Do you know where that check is?

A No.

Q You have to talk --

A No, I don't.

Q Now, after you wrote those checks, Mr. Werner, in your office, did you receive another telephone call from Mr. Ezrine?

A Yes. I got a second telephone call from Mr. Ezrine, instructing me to issue additional checks for individuals, and he gave my girl the list, and based upon Mr. Ezrine's conversation we issued those checks.

Q Did he tell you what these additional checks were for or what is going to happen to them or anything more?

A Yes. He told me that these individuals will endorse the checks and purchase the stock.

MR. SEIDMAN: If your Honor please, might I respectfully request an instruction of the witness, when he is using a pronoun, to put the name in, as to whom he is speaking about.

THE COURT: Well, he is only talking about Mr. Ezrine now.

THE COURT: Mr. Ezrine.

MR. SEIDMAN: Thank you.

Q Mr. Werner, I am going to show you a group of checks marked Government's Exhibits 60, 61, 62, 63, 8 and 44 and I ask you whether these are the checks --

THE COURT: 8 is just 8 or 68?

MR. WILSON: No, these were identified earlier,

your Honor. I'm sorry. 277a

THE COURT: That's all right.

MR. WILSON: 8 is marked only for identification and 44 is in evidence.

THE COURT: All right.

Q And I ask you if these are the checks that you wrote as a result of that telephone conversation.

THE WITNESS: Do you want me to call them out?

THE COURT: No, he just wants to know if those --

Q Do you recognize those checks as the ones you wrote as a result of that telephone conversation?

A That is correct.

Q And taking each check, can you tell us if you can recall to whom you delivered it? Did you deliver those checks to someone?

A Yes, I did.

Q And to whom did you deliver each one of those checks, if you can remember?

A Some of the checks were delivered to Ivan Ezrine and some of the checks were delivered to Ira Feinberg.

Q Can you tell by looking at them which was which?

A Yes.

THE COURT: How?

THE WITNESS: By their accounts.

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Q By the names on the checks?

A By the names on the checks. Made out to the individual endorsement.

THE COURT: Could you give me an example?

THE WITNESS: Here, an example, Emerson Nursing, would be Mr. Feinberg's client.

THE COURT: You just know that it was, is that it?

THE WITNESS: Yes.

THE COURT: All right.

THE WITNESS: This would be Mr. Ezrine's --

THE COURT: I am satisfied. You just happen to know who matched whom, is that right?

THE WITNESS: Yes.

MR. SEIDMAN: But, your Honor, may I respectfully state that the conversation is with Mr. Ezrine.

THE COURT: He is not talking about a conversation now. He is saying how he can tell whom he delivered the checks to.

MR. SEIDMAN: I will deal with that in cross examination.

Q Let me show you Government's Exhibit 63. To whom did you deliver this group of three checks?

A The same investment Stanley Preston and Mike Bronstein, to Mr. Ivan Ezrine.

Q Government's Exhibit 44 in evidence.

A Deneso Corporation, to Mr. Ezrine.

Q Government's Exhibit 8 for identification.

A Emerson Nursing Home, to Mr. Feinberg.

Q Government's Exhibit 62 for identification.

A George Quinn to Mr. Ezrine.

Q Government's Exhibit -- are you sure about these checks, Mr. Werner, or are you guessing?

A No. Jack Badish to Mr. Feinberg.

Q Badish is 61 for identification?

A And Ronald Klim to Mr. Ezrine.

MR. WILSON: Government offers them into evidence, your Honor.

MR. SCHWELLER: May I see them.

No objection, your Honor.

MR. SEIDMAN: No objection, your Honor.

THE COURT: Received.

(Government's Exhibits 8, 44, 62, 61, 60 and 63 received in evidence.)

Q Now, Mr. Werner, after you wrote those checks in your office did you go to the closing at the bank in New Jersey on February 20, 1970?

A I did.

Q I did.

Q How long were you at the bank on that day?

A Approximately four hours.

Q Now, slowly and in detail, would you tell us what you did, what conversations you participated in and who said what to whom, that you can recall at this time?

A When I arrived with Mr. Ezrine at the National Community Bank, on February 20th, I immediately gave Mr. Ezrine the checks belonging to him for the selling stockholders and to the individual that he told me to make it out to, and I gave checks to Mr. Feinberg, his own check to his order in the amount of $559,000 and some odd dollars and the other checks that belonged to his selling stockholders.

He then introduced me to Mr. Bayliss, who at that time was a vice-president of the National Community Bank. When I presented the checks to Mr. Feinberg, especially the big one, the $559,000 check, I spoke to him and Mr. Bayliss and instructed them not to deposit that check for a day or so, to have the checks that I collected at the closing to clear, because I didn't have sufficient funds to honor that payment.

Mr. Bayliss, in sort of a gentlemen's agreement, shook his head and said, "We will take care of it," not to worry about it.

When I sat down at the oval table I was handed

checks all afternoon from people that delivered their checks at the closing, from Mr. Feinberg who instructed me as he received the checks who the checks were for, how many shares were going to be purchased and so on.

I made a notation on my legal pad and then I had Mr. Bayliss' secretary help type up the confirmations for me. By the same token Mr. Ezrine presented checks to me and also gave me instructions for the purchase of so many shares of stock. This went on all afternoon until about approximately 3:00 or 3:30.

Mr. Greenberg, who happened at that time to represent me at the closing --

Q Is he a lawyer --

A An attorney.

-- was examining the check and making a run-off to see what kind of total we had. After several attempts, he couldn't get to any exact figure --

Q Was this on an adding machine, Mr. Werner?

A On an adding machine, Mr. Bayliss' adding machine, in his office. And then Mr. Ezrine stepped in to help him out. When Mr. Ezrine ran off the the total of the checks, they came out to a figure which was less than was permitted to close the deal.

THE COURT: Less than four and a half million?

THE WITNESS: Less than four and a half million.

A When Mr. Ezrine's figure was given out at the table, Mr. Ezrine gave me some personal checks and so did Mr. Feinberg, to help consummate the closing, which was over four million dollars.

THE COURT: Wait a minute. What do you mean? What was over four million dollars?

THE WITNESS: The amount of checks that I collected at the closing.

THE COURT: You mean without their checks you collected --

THE WITNESS: No, with their checks.

THE COURT: Didn't it reach four and a half million dollars with their checks?

THE WITNESS: No.

THE COURT: It was over four.

THE WITNESS: It was four million and something.

Q Continue, Mr. Werner.

A When the closing ended I was introduced to a Mr. Netelkos and a Mr. Gamarikian representing Carlton Cambridge, which was another brokerage firm, that took down 142,000 shares of Manor Nursing Centers.

In the course of the conversation they wanted a guarantee --

MR. SEIDMAN: I object to the manner in which the witness is answering. I don't object to conversation, but I would like to know who said what.

THE COURT: What is the problem? You mean the "they"?

MR. SEIDMAN: He is not saying who was saying what to whom. It is a characterization.

THE COURT: He was introduced to Netelkos and Mr. Gamarikian. He is now about to say what they said.

MR. SEIDMAN: Fine.

A Mr. Netelkos and Mr. Gamarikian wanted a guarantee from me that I would not run away with their checks, which was over one million dollars, and I says, "How can I run away with your checks. First of all, it is made out to Manor Nursing Centers. Second of all, if I was to run away with the checks" -- why would I run away with theirs and not with the other checks I collected. I assured

them that when I got back to New York I will make proper entry in my books showing the various entries that took place at the closing and make a deposit at the Chemical Bank and Trust Company.

Further assurance was given to them by Mr. Ezrine, who had a letter typewritten by Mr. Bayliss' secretary assuring Mr. Netelkos and Mr. Gamarikian that he will go along with me to make sure that the checks collected at the closing will be deposited at the Chemical Bank & Trust Company.

We had further conversations with Mr. Netelkos and Mr. Gamarikian who was to participate in making the market of Manor Nursing Centers. I told them that I would have two brokers, Hill Thompson & Company and T. H. Lehman. They told me they will have several brokers in on the pink sheets.

The pink sheets are sheets that the over-the-counter brokers maintain to find out who makes the market in any XYZ stock that is traded over-the-counter.

In the interim of the closing or after the closing I spoke to Mr. Ezrine and Mr. Feinberg that the checks that I have collected there were all uncertified with maybe one or two exceptions.

THE COURT: When was this that you spoke to them?

THE WITNESS: During the closing.

THE COURT: During the closing?

THE WITNESS: During the closing or after the closing.

THE COURT: Which?

THE WITNESS: I would say during the closing.

Q When you say after the closing --

THE COURT: You mean immediately after?

THE WITNESS: Yes.

Q It was all at the bank?

A At the bank, at the National Community Bank.

THE COURT: So you are not quite sure when it was?

THE WITNESS: I'm not sure as to the time element.

THE COURT: Shortly before the end or --

THE WITNESS: Right. That the checks I collected at the closing were not certified and since the checks are not certified, I don't know if these people or corporations have the monies in the banks to honor it.

THE COURT: Right.

THE WITNESS: And they assured me that everything will be running smoothly. They will be clear and everything.

On the strength of their conversations or

conversation, I accepted their word and took Mr. Ezrine back to New York and went back to my office, made the proper entries and --

MR. SEIDMAN: I object to the statement that the witness made the proper entries. There is no evidence as to that, your Honor.

THE COURT: He is just giving the evidence for it.

MR. SEIDMAN: That is a conclusion as to whether the entries are proper or not.

THE COURT: You can find out later on if you want to know what he means.

Q In any event, you went back to your office; is that right?

A I went back to my office again.

THE COURT: When you say you made proper entries, what do you mean?

THE WITNESS: You see, I have what we call a daily working sheet. In order for me to balance out the monies that I deposited in the bank on any given day I have to make entries in my working sheet.

THE COURT: You entered these checks just the way you always entered checks in the ordinary course of business?

THE WITNESS: That is correct, and in the ordinary procedure. I had my entire office working late that night to expedite these checks collected at the closing so I can be at the bank at seven o'clock that night to make the deposits.

Q Did you deposit the checks in the bank that night?

A I did.

Q Mr. Werner, I show you what has been marked as Government Exhibit 5 in evidence, 37 in evidence and 64 for identification and I ask you if you can identify these checks.

THE COURT: Do them one at a time, Mr. Wilson.

Q Start with Exhibit 5.

A This check was given to me by Emerson Nursing Centers or Mr. Feinberg in the amount of $100,000. Emerson endorsed it and I endorsed it and deposited it in the bank.

Q Go to the next one, Mr. Werner, 37.

A These checks were made out to Englewood Laboratories for 133 County Corporation. They are also endorsed by Englewood Clinical Laboratory.

MR. SEIDMAN: On many occasions you have told me that the document speaks for itself.

THE COURT: That is correct. I agree with you.

Q Did you deposit that in your account?

A Yes.

MR. SEIDMAN: The document would indicate that also.

MR. WILSON: I have to put it in evidence.

THE COURT: It may indicate a stamp that doesn't indicate that this man did a certain thing. Please be seated, Mr. Seidman.

MR. SEIDMAN: Yes, your Honor.

A And this --

Q Government Exhibit 64 was also received by you; isn't that correct?

A That is correct, at the closing, and also deposited in my escrow account.

Q Do you know who gave you all the checks reflected by 64, 37 and 5?

A Mr. Feinberg did.

MR. WILSON: The Government offers them in evidence.

MR. SEIDMAN: No objection.

MR. SCHWELLER: No objection.

THE COURT: The only one offered in evidence is 64. The others are in evidence.

MR. SEIDMAN: That is the reason I had risen before, your Honor. I believed that the other checks were

in evidence previously.

THE COURT: They were. You are right.

*** [Government Exhibit 64 received in evidence.]

Q Mr. Werner, do you know what happened to these checks after you deposited them in your bank?

A Yes, they all bounced.

THE COURT: May I see those?

MR. WILSON: Yes, your Honor.

THE COURT: Thank you.

Q Mr. Werner, I show you what has previously been marked as Government Exhibits 46, 47 and 48 for identification. Have you seen these checks before?

A I have at the closing.

Q Who gave them to you?

A Mr. Ezrine.

Q Did you deposit them into your account that night?

A I did.

Q Who is the maker of the checks?

A Denesco Corporation.

MR. WILSON: The Government offers them into evidence.

MR. SCHWELLER: No objection.

MR. SEIDMAN: No objection.

THE COURT: All right, they will be received.

[Government Exhibits 46, 47 and 48 received in evidence.]

Q Mr. Werner, do you know what happened to these checks, 46, 47 and 48?

A Yes, they also bounced.

Q Mr. Werner, I show you Government Exhibits 13, 14 and 15.

THE COURT: Are they in evidence?

MR. WILSON: In evidence.

Q Did you receive these checks at the closing?

A I did.

Q Did you deposit them into your bank account that night?

A I did.

Q Do you know what happened to these checks?

A One check is a treasurer's check.

Q That is 13?

A Exhibit 13. That cleared, and the other two checks bounced.

Q And that is Government Exhibits 14 and 15 from the Upton Corporation and --

MR. SEIDMAN: The document speaks for itself. I am going to object to counsel doing this unless I'm permitted to do it.

THE COURT: You are permitted to read from any exhibit at any time. What you are not permitted to do is ask questions.

MR. SEIDMAN: He is predicating questions on this.

THE COURT: He is just identifying what he is reading from.

MR. WILSON: So the jury knows what I am doing.

MR. SEIDMAN: I want the jury to know everything.

MR. WILSON: The two checks are the Upton Corporation and the International Transfer Company.

THE COURT: However wrong my rulings, Mr. Seidman, I apply them equally to both sides.

MR. SEIDMAN: I appreciate that, your Honor.

MR. WILSON: I will agree with that, your Honor.

MR. SCHWELLER: No comment.

THE COURT: Which part?

MR. WILSON: In chambers, your Honor.

MR. SEIDMAN: I have the utmost respect for your Honor's rulings. I want the record to show that.

Q I show you Government Exhibit 65 for identification. Did you receive those two checks at the closing?

A That is correct, from Mr. Ezrine.

Q Are they in the account of Glendale, Inc.?

A That is correct.

Q After the closing, what happened to those checks?

A They were deposited in the bank.

Q After they were deposited in the bank, what happened to them?

A They bounced.

Q I show you Government Exhibit 66 for identification. Can you tell us what they are, what these two checks are?

A These checks were from Ivan Ezrine.

Q Both drawn on his own account?

A Correct.

Q Did you receive those checks from him at the closing?

A That is correct.

Q Did you deposit them into your bank account that night?

A That is right.

Q Did they bounce thereafter?

A Yes.

MR. WILSON: The Government offers 65 and 66.

MR. SEIDMAN: No objection.

MR. SCHWELLER: No objection.

[Government Exhibits 65 and 66 received in evidence.]

THE COURT: You must have had a busy phone.

THE WITNESS: Terribly. For a small shop I had a big business.

MR. SEIDMAN: We will be able to develop that, your Honor.

MR. WILSON: Your Honor, can I just give some totals to the jury on these checks?

THE COURT: Yes.

MR. SEIDMAN: Pardon?

THE COURT: He is going to give totals to the jury of the checks.

MR. SEIDMAN: I will object to that, your Honor.

THE COURT: Your objection is noted and overruled.

MR. SEIDMAN: Thank you.

MR. WILSON: The amount of money reflected by the checks drawn on 133 Country Road, Inc., which is drawn by Ira Feinberg and which are Exhibits 5, 37 and 64 is approximately $250,000.

The Denesco checks, Government Exhibits 46, 47 and 48 total 1.7 million.

The checks from Upton Corporation and International Transfer Company are $832,500, and the checks from Ivan Ezrine, Government Exhibits 65 and 66 are approximately $350,000.

Q Mr. Werner, I show you what has been marked as Government Exhibit 67 for identification. Can you tell us what that is?

A These are confirmations sent out to individual clients who purchased stock and who have sent in their checks and these checks cleared.

Q I show you Government Exhibit 68 for identification. Can you tell us what that is?

A This is a duplicate copy made in my office when we sent out stocks to the individuals showing the name, the address of the clients and the amount of shares and the certificate number.

THE COURT: Is that a record that you kept in your office?

THE WITNESS: Yes.

Q How was 67 sent to the people who received it or how was it sent?

A It was sent with an original confirmation, prospectus enclosed in a brown manila envelope.

Q Was it put in the mail or hand-delivered?

A Put in the mail.

MR. WILSON: The Government offers 67 and 68 in evidence.

MR. SEIDMAN: No objection, your Honor.

MR. SCHWELLER: No objection.

THE COURT: They are received.

[Government Exhibits 67 and 68 received in evidence.]

Q Mr. Werner, I show you what has been marked Government Exhibit 69 for identification. Can you tell us what these are?

A These are subscription agreements signed by the individual, address, telephone number and Social Security number for the amount of years that they were willing to purchase.

Q This accompanied their check; is that right?

A That is correct.

MR. WILSON: The Government offers into evidence Government Exhibit 69.

MR. SEIDMAN: No objection.

MR. SCHWELLER: No objection.

THE COURT: It is received.

[Government Exhibit 69 received in evidence.]

MR. WILSON: At this time I would like to read the top sheet annexed to the subscription agreement.

THE COURT: All right.

[Mr. Wilson read from Government Exhibit 69.]

MR. SEIDMAN: I don't object to counsel reading

that except that that is his statement and an exhibit prepared by Benjamin Werner sent to the public and I don't believe that that is necessarily binding on my client.

THE COURT: The objection is noted and it is overruled.

[Mr. Wilson read from Government Exhibit 69.]

MR. SEIDMAN: If your Honor please, in view of the fact that counsel has chosen to read this document to the jury, might I now examine it at this time to read the appropriate omitted parts that I deem appropriate?

MR. WILSON: I only left out No. 5, your Honor.

THE COURT: Tell us if you want to read No. 5.

MR. SEIDMAN: If your Honor please, I would just be interested in the back portion of this document, which indicates --

THE COURT: Don't tell me. If you want to read it you can read it.

MR. SEIDMAN: May I?

THE COURT: Yes.

MR. SEIDMAN: Thank you.

[Mr. Seidman read from Government Exhibit 69.]

Q Mr. Werner, I show you what has been marked as

Government Exhibit 70 for identification. Can you tell us what that is?

A Yes.

Q What is it?

A I received a telephone call --

Q No.

THE COURT: First just tell us what it is.

THE WITNESS: It is a letter to Mr. Ezrine.

Q Signed by whom?

A Signed by Benjamin Werner Company.

Q What does it relate to?

A It relates to shares of stock delivered to Mr. Ezrine and the various accounts.

MR. WILSON: The Government offers it into evidence.

MR. SEIDMAN: I have no objection.

MR. SCHWELLER: No objection.

THE COURT: Received.

[Government Exhibit 70 received in evidence.]

MR. WILSON: May I read this exhibit, your Honor?

THE COURT: Yes.

[Mr. Wilson read from Government Exhibit 70.]

Q Mr. Werner, can you tell us who wrote that

writing on that document, Exhibit 70?

THE COURT: If you know.

Q If you know.

A Yes. When this stock was delivered by my messenger to Mr. Ezrine Mr. Ezrine signed a receipt for my records. This is the receipt.

MR. SEIDMAN: A technical aspect. I don't believe this witness is equipped to state that that is Mr. Ezrine's signature.

THE COURT: Do you know Mr. Ezrine's signature?

THE WITNESS: Yes.

MR. SEIDMAN: I'm happy. It is important to me if he knows his signature.

THE COURT: What is the question, Mr. Wilson?

Q Can you tell us what it says? Can you read his handwriting?

A Yes. "Received." This is his signature and the date.

Q And the date is what?

A 2/24/70.

Q Mr. Werner, did you have a conversation with Mr. Ezrine with respect to this letter?

A That is correct.

Q Would you tell us what was said in that conversa-

tion?

A I got a call from Mr. Ezrine on the 24th of February, 1970 to deliver out various securities out of various accounts to him personally. That was 170,000 shares for the account of Denesco and various accounts that he gave me at the closing.

Q Who paid for these 170,000 shares?

A Theoretically Denesco, but the check bounced.

Q But, in other words, what you mean is that the checks --

MR. SEIDMAN: He means what he said, Mr. Wilson.

MR. WILSON: All right. I agree with you. My form was no good.

MR. SEIDMAN: I object.

MR. WILSON: I have no objection.

THE COURT: Mr. Seidman, you actually have no right to address Mr. Wilson and, of course, to provoke him to address you back. If you wish to object, object to me.

MR. SEIDMAN: Your Honor is correct.

MR. SCHWELLER: This testimony concerns Denesco and I have no objection.

MR. SEIDMAN: I have no objection.

THE COURT: That is fine.

Q Were the 170,000 shares reflected by the letter, Government Exhibit 70, paid for by the checks marked Government Exhibits 46, 47 and 48, the Denesco checks for 1.7 million?

A That is correct.

Q When was the first day that the stocks traded in the pink sheets?

A On February 24th.

Q Let me direct your attention to February 25, the next day. Did you get a call on that day from the representative of the Chemical Bank?

A I did. Mr. Bernard called me up at approximately nine o'clock in the morning. Mr. Bernard was the vice president of the Chemical Bank that I dealt with and he told me that a lot of checks bounced back, have bounced, and I better come down and look them over and see what is to be done.

Q What did you do?

A I immediately hung up the telephone. I ran right down to the bank. I was in the same building with the bank that I dealt with, the Chemical Bank. They were in the main lobby. When I arrived at the bank I immediately was taken down to the vault where there was a separate room where I worked with Mr. Bernard and some of his

assistants to see what can be done as far as reconciling the bounced checks and to see how much money I have in the bank in order for me to conduct my daily business.

Q What did you do with your outstanding checks that day as a result of this meeting with the bank?

A The outstanding checks that I issued at the closing on February 20 -- I told Mr. Bernard to stop payment on all of them.

Q Were any of the checks you issued at the closing to Manor Nursing or the selling stockholders paid by the bank?

A Yes.

Q Which ones?

A One check issued to Ira Feinberg in the amount of $559,000.

Q Mr. Werner, I show you what has been marked as Government Exhibit 72 for identification. Can you tell us what this is?

A These are advices from the Chemical Bank to me showing stop payment on various checks.

Q Issued to Manor Nursing Centers?

A Issued to Manor Nursing Centers.

MR. WILSON: The Government offers it into evidence.

MR. SEIDMAN: No objection.

MR. SCHWELLER: No objection.

[Government Exhibit 72 received in evidence.]

[Government Exhibit 72 was read from by Mr. Wilson.]

Q Mr. Werner, I show you what has been marked as Government Exhibit 71 for identification. Can you tell us what those are?

A Yes. This is a list also from the Chemical Bank that these checks had bounced.

Q Is that the notice you got that these are the bounced checks?

A That is correct.

MR. WILSON: The Government offers it in evidence.

MR. SEIDMAN: I would like to see that, Mr. Wilson.

THE COURT: While you are looking over those, Mr. Seidman, we will take the morning recess.

MR. SEIDMAN: I have no objection.

THE COURT: I wasn't pressing you.

MR. SEIDMAN: I appreciate that.

THE COURT: All right, then, they are admitted in evidence.

[Government Exhibit 71 received in evidence.]

[Recess.]

(In the robing room.)

THE COURT: Mr. Seidman has made the request that he be excused tomorrow morning until at the latest 11:30 because of an urgent matter concerning a client of his who must be before the Attorney General of the State of New York, with regard to whom he committed himself before this case commenced and I told him I would like to accommodate him but I would like to see how we are going, if we have made reasonably good progress in the last day.

Do you think that you have picked up any time in the last day or so?

MR. WILSON: I think so, unless Mr. Seidman spends more than the rest of today.

MR. SEIDMAN: I don't think I will.

THE COURT: Then I think the Government may well be ready to rest tomorrow.

Mr. Seidman, I am not using one thing vis-a-vis the other, but even outside your application, I don't know of anything which would warrant a cross examination of Mr. Werner for more than the rest of today, assuming you are ready to conclude.

MR. WILSON: I am afraid you haven't heard the rest of it, your Honor; it's just starting.

MR. SCHWELLER: My cross examination, your Honor,

will take about five minutes.

THE COURT: You have heard the situation, and I will review it at the end of the day, but as it sounds now it looks good.

MR. WILSON: I would say that the only reason we may have a problem is because of the bank people --

THE COURT: Well, even if you don't rest tomorrow, the situation looks good.

MR. WILSON: May we have a representation from Mr. Seidman as to whether his client will testify? Does he know at this juncture?

THE COURT: He doesn't have to do that.

MR. SEIDMAN: I haven't made up my mind on that, your Honor.

(In open court.)

BY MR. WILSON:

Q Mr. Werner, when we broke, you had just told us that you had been to the bank and stopped payment on the checks. Other than that, what did you do on February 25, 1970?

A I merely returned to the office, and I called up Mr. Ezrine and I called up Mr. Feinberg and told them what transpired, and they told me that they will get after their clients and make good the checks that have bounced.

On that telephone call --

THE COURT: Was that one telephone call or two telephone calls?

THE WITNESS: One to Mr. Ezrine and one to Mr. Feinberg.

THE COURT: Yes. So two?

THE WITNESS: Two.

THE COURT: All right.

A Because I was very angry, I was taken in and I threatened to go --

MR. SEIDMAN: I object to that, your Honor.

THE COURT: Mr. Werner, we understand how you feel, but that is not proper evidence here. We just want to know what you said and what you did.

The jury will disregard Mr. Werner's feelings.

MR. SEIDMAN: Whether they were his feelings, your Honor.

THE COURT: No, they will disregard what he had to say about that.

Q Tell us what you said to Mr. Ezrine and Mr. Feinberg?

A The first call was Mr. Ezrine. I told him that the checks have bounced, and what are they going to do about the checks bouncing. They told me that --

THE COURT: Don't say "they". You were just talking to him, Ezrine.

THE WITNESS: Yes.

THE COURT: Tell us what Ezrine said.

THE WITNESS: He said he will get after his clients and get them to make good the checks that bounced. And I spoke to Feinberg and he told me the same thing.

Q Did you tell them anything else on the telephone?

A I told Mr. Ezrine if the checks aren't made good I will go to the SEC and blow up the whole deal, that I didn't get payment at the closing, and the checks bounced.

Q Do you recall if you said the same thing to Mr. Feinberg?

MR. SEIDMAN: If your Honor please, I object to the form of the question.

THE COURT: Sustained.

Sustained. When I sustain the objection, will you sit down, please?

Q What did you say to Mr. Feinberg, if anything more than what you have already told us, if you remember?

A That I threatened to go to the SEC.

Q I'm sorry --

A That I threatened to go to the SEC.

Q What did you say, Mr. Werner?

A That the checks have bounced, all the checks that he has given me from his clients and if the checks aren't made good I will go to the SEC.

Q Did you talk to Mr. Ezrine in the next couple of days?

A I spoke to Mr. --

Q Yes or no.

A Yes.

Q How many times did you talk to Mr. Ezrine in the next couple of days?

A Every day.

Q How about Mr. Feinberg. Did you talk to him during the next couple of days?

A Maybe two or three times.

Q Now, directing your attention to March 2nd, Monday March 2nd, did you talk with a man named Rubin Waldman on that day?

MR. SEIDMAN: If your Honor please, I am going to object to this type of leading.

THE COURT: All right. You object and I overrule it. Merely to ask if there was a conversation I don't think is improper.

Q Did you talk to Mr.Waldman?

THE COURT: Yes or no.

A Yes.

Q Who is Rubin Waldman?

A Rubin Waldman was a client of mine, a friend of mine and also a very close friend of Ivan Ezrine.

Q Where did you talk to Mr. Waldman?

A Mr. Waldman arrived in my office on March 2nd, at approximately 9:00 o'clock in the morning.

Q How long was he in your office?

A He was there practically the whole day, from 9:00 until about 3:30.

Q While Mr. Waldman was in your office, that day, did you receive a telephone call from Mr. Ezrine?

A I did.

Q And what did you talk about in that telephone call?

A I told Mr. Ezrine that "Your man is here that you have sent over, to stay in my office, to try to persuade me not to go to the SEC."

Q What did Mr. Ezrine say to you?

A He said, "Just listen to him."

Q Now, will you tell the jury what Mr. Waldman said to you in the course of that day?

A He said that Mr. Ezrine called him at his home

late Sunday evening to make sure that he is in my office and stay there and try to persuade me not to go to the SEC.

Q Did you go to the SEC?

A No, I didn't.

Q On March 4th did you receive another telephone call from Mr. Haber?

A No.

Q I'm sorry. Mr. Ezrine.

A I received a telephone call from Mr. Ezrine on March 4th, and he said he would be down with a man by the name of Mr. Haber with a check for $600,000 to purchase 60,000 shares of Manor Nursing Centres at $10 a share.

Q Did you meet this man, Mr. Haber?

A He came down with Mr. Haber in my office and Mr. Haber presented me a check for $600,000, for 60,000 shares at $10 a share.

Q I show you Government's Exhibit 73 for identification and I ask you if that is the check?

A That is the check.

MR. WILSON: Government offers it.

THE COURT: Was it certified?

MR. WILSON: It's a certified check.

MR. SEIDMAN: I have no objection.

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MR. SCHWELLER: No objection.

Excuse me, your Honor, I don't see Mr. Delmonico in the courtroom. I thought he was here.

THE COURT: I don't, either.

MR. SCHWELLER: May I just take a look outside?

(Government's Exhibit 73 for identification received in evidence.)

xx

DEFENDANT DELMONICO: I'm sorry, sir.

THE COURT: Well, it's your loss, Mr. Delmonico, but you should check to see when we resume.

MR. SCHWELLER: Thank you, your Honor.

Q Who was present when you got the check?

THE COURT: Exhibit 73?

Q Exhibit 73.

A Mr. Ezrine, Mr. Haber and myself.

Q Was Mr. Feinberg there that day?

A He was not there that day.

MR. SEIDMAN: If your Honor please, initially he stated who was there and to ask if somebody else was there is a type of leading question, suggesting something to the witness.

THE COURT: It seems to me it is helpful to Mr. Feinberg.

MR. SEIDMAN: In this instance.

MR.WILSON: I am just trying to make it clear, Mr. Seidman.

MR. SEIDMAN: Thank you.

Q Mr. Werner, on the next day did you talk to Mr. Ezrine again about the Haber purchase of stock?

A Yes. Mr. Ezrine --

Q When was it?

A March the 5th.

Q When on March the 5th?

THE COURT: What time of day?

THE WITNESS: Sometime in the mid-morning.

THE COURT: All right.

Q Was it a telephone conversation?

A A telephone conversation.

Q What did he say?

A He said that Mr. Haber was coming back to my office, and he is going to cancel out the transaction and I should return the check, which I did.

THE COURT: You still had it in your possession?

THE WITNESS: Oh,no. I deposited it --

THE COURT: So you didn't return the check?

THE WITNESS: I returned my check to him.

THE COURT: Yes. I just wanted to get it straight. You said you returned the check. You didn't

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return the check.

THE WITNESS: No, not the same check I received on March the 4th. I gave him my personal check. I had the funds in the bank and the bank gave me permission to issue the check on that certified check.

Q What else did you and Mr. Ezrine say in that telephone conversation?

A And he will also be down with Mr. Feinberg to talk to me.

THE COURT: Who? Ezrine?

THE WITNESS: Ezrine and Feinberg will be down in my office.

Q Did he discuss why he would be in your office?

A When they got to my office they were going to discuss it.

MR. SEIDMAN: If your Honor please, I object to the use of the term why.

THE COURT: Was one of the things Mr. Ezrine mentioned to you why he was coming?

THE WITNESS: Yes, they had something to talk to me about Manor Nursing and when they get to my office they will let me know.

THE COURT: Wait a minute. All we have asked about is the phone call.

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Q Did Mr. Feinberg and Mr. Ezrine come to your office that day?

A They did.

Q Did you have a conversation with them that day?

A Yes.

Q What was said by each of them?

A The conversation was, Mr. Ezrine said that in order for us to cover up the --

THE COURT: Who is us?

THE WITNESS: Mr. Feinberg, Mr. Ezrine and myself.

MR. SEIDMAN: I object to that.

THE COURT: "Us" could mean --

THE COURT: Did Mr. Ezrine use the word "us"?

THE WITNESS: I would say so.

THE COURT: All right. Then the jury will regard the word "us" and decide what he means by it.

THE WITNESS: For us to cover up, Mr. Ezrine, Mr. Feinberg and myself, I have to make certain entries in my books and issue a certain check to Manor Nursing which would be redeposited on that day, because it is getting toward the deadline of the underwriting.

THE COURT: What was the deadline, if you recall?

THE WITNESS: March the 6th.

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THE COURT: The next day?

THE WITNESS: The next day.

Q Mr. Werner, I show you Government's Exhibits 74 for identification and 75 for identification. Can you tell us what these checks are?

Just tell us what they are.

A Yes. These checks were issued to Manor Nursing Centres in the amount of $750,000 and the amount of $354,006.89, out of my escrow account.

Q Are these the checks you have referred to?

A Yes.

MR. WILSON: Government offers them in evidence.

MR.SEIDMAN: I have no objection.

THE COURT: Was it your own escrow account or the escrow account created for the purpose of this stock issue?

THE WITNESS: Well, I had an escrow account, your Honor, previously.

THE COURT: Before this?

THE WITNESS: Yes.

THE WITNESS: And you used it?

THE WITNESS: And I just continued it.

(Government's Exhibit 74 and 75 for identification received in evidence.)

xx

Q Mr. Werner, I show you Government's Exhibit 76 for identification, can you identify that document?

A Yes. This letter was dictated by Mr. Ezrine to show that the checks that I issued to Manor Nursing was paid to Manor Nursing, and it was for my protection in case the regulating authorities like the SEC or the NASD would come to my office and examine my books.

It was signed by Mr. Feinberg and Mr. Ezrine.

MR. WILSON: The Government offers it in evidence.

MR. SEIDMAN: I have no objection.

(Government's Exhibit 76 for identification received in evidence.)

xx

MR. WILSON: I would like to read that to the jury, your Honor.

(Mr. Wilson read to the jury from Government's Exhibit 76.)

Q Did you ever buy any short term Government obligations?

A No, sir.

Q Was this --

MR. SEIDMAN: If your Honor please, whether the witness did or didn't is not binding.

Q Is this letter false, Mr. Werner?

A That is correct.

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THE COURT: The objection is overruled.

Q While Mr. Feinberg and Mr. Ezrine were in your office, did Mr. Haber arrive?

A He did.

Q And what happened at that time?

A He asked for his check, and in order for me to issue his check he wanted a certified check, I had to call up Mr. Bernard to make sure that there was sufficient funds in my account to pay back Mr. Haber. Mr. Bernard called me back within a few minutes and says that I can issue a check to Mr. Haber for the amount of $600,000, returning his check that he gave me on March 4th.

Q And Mr. Werner, I show you Government's Exhibit --

MR. SEIDMAN: If your Honor please, I object to the term "Returning his check."

THE COURT: I don't see why you object to it. It may be inaccurate. I was the one who brought out that the actual check wasn't returned.

Q I show you Government's Exhibit 78 for identification. Can you tell us what that check is?

A This was the first check issued to Mr. Haber. It was issued to Ivan A. Ezrine as attorney for Manor Nursing Centre, $600,000. It was certified, and Mr. Haber refused to accept the check in this manner. I then

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issued another check.

Q And I show you Government's Exhibit 79 for identification. Can you tell us what that is?

A Yes. It was issued in the name of Ivan A. Ezrine as attorney for $600,000, endorsed by Mr. David Haber.

Q And given to Mr. Haber, that second check?

A That is correct.

Q And what happened to the first check, Government's Exhibit 78 for identification?

A It was redeposited back in my escrow account.

Q And then you wrote the second check for the same amount?

A Yes.

Q And both were certified?

A Yes.

MR. WILSON: The Government offers both exhibits, 78 and 79, for identification.

(Government's Exhibits 78 and 79 for identification received in evidence.)

xx

Q Mr. Werner, I show you Government's Exhibit 77 for identification. Can you tell us what that document is?

A This is also a letter to cover up the --

MR. SEIDMAN: If your Honor please, I am going to object to the use of the term "cover up".

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THE COURT: I will sustain your objection.

(To the witness) Tell us, a letter from whom to whom?

MR. SEIDMAN: This isn't the Watergate.

THE COURT: Mr. Seidman, if you ever make another remark other than an objection, you will be held in contempt of Court. I am tired of it.

MR. SEIDMAN: Yes, your Honor.

THE WITNESS: This is a letter dictated by Mr. Ezrine, signed by me, Mr. Feinberg and Mr. Ezrine, as part of the cover up.

Q What happened to this letter, did you keep this?

MR. SEIDMAN: I object.

THE COURT: Sustained.

The jury will disregard Mr. Werner's statement that it was a coverup. He can't characterize the situation.

MR. WILSON: I offer it in evidence.

(Government's Exhibit 77 for identification received in evidence.)

xx

MR. WILSON: I would like to read this to the jury.

(Mr. Wilson read to the jury from Government's Exhibit 77.)

Q Mr. Werner, in January of 1971, were you summoned

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to appear before the Securities and Exchange Commission?

A I was.

Q And did you tell the Securities and Exchange Commission that you had paid over to Manor Nursing Centres the full amount of money owed by you to them?

A That is correct.

Q And did you show them that letter?

A That is correct.

Q In October or thereabouts, in 1071, did you appear in a civil action brought by the SEC before a judge in this courthouse, Judge Motley?

A That is correct.

Q And did you testify in that proceeding?

A I did.

Q And did you tell the Judge that you had paid over all the monies to Manor Nursing Centres, Inc.?

A I did.

Q And did you rely on that letter?

A I did.

Q That was false?

A That is correct.

Q Now, Mr. Werner, I show you what has been marked as Government's Exhibit 80 for identification. Would you tell us what that is?

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to be put.

THE COURT: All right.

Q Prior to February 20, 1970 had Harold Greenberg and Leonard Glass represented you as underwriter's counsel with respect to the offering of any stock to the public as an initial offering?

A I think there was one, but with the Court's permission --

THE COURT: One issue?

THE WITNESS: One issue prior to Manor Nursing.

THE COURT: All right, that is all. That is the answer to the question. They represented him in one issue.

Q If you know, were you ever involved in any business deals prior to December 1969 with Harold Greenberg or Leonard Glass?

THE COURT: Other than their acting as his attorney?

MR. SEIDMAN: Other than that, yes.

A Mr. Ezrine at that time was my attorney.

THE COURT: When was this?

THE WITNESS: This goes back to 1962 to 1970. I had a situation with either the NASD or the SEC which I needed representation.

THE COURT: Hold it. The question that you were asked was whether you ever had any business transactions or associations with Mr. Greenberg or Mr. Glass other than Mr. Greenberg representing you as a lawyer.

THE WITNESS: You see --

THE COURT: The answer to that is yes or no, Mr. Werner.

THE WITNESS: Yes.

Q Isn't it a fact that you met Harold Greenberg, who represented Benjamin Werner & Company , at the Manor Nursing Centers, Inc. closing as a result of his being introduced to you by Ivan A. Ezrine?

A That is correct.

THE COURT: Is that the first time that you met Greenberg, at the closing?

THE WITNESS: No, I think I met him once before, at Mr. Ezrine's birthday party.

THE COURT: Ezrine introduced you to Greenberg?

THE WITNESS: Yes.

THE COURT: In or about the time of this closing?

THE WITNESS: That is correct.

Q However, isn't it a fact that Mr. Ezrine had recommended the firm of Glass & Greenberg to you prior to the Manor Nursing Home closing with respect to legal

representation of you and your company before a regulatory agency?

A He did.

Q So therefore Mr. Ezrine had introduced you to Harold Greenberg prior to the Manor Nursing Center's, Inc.' underwriting; is that correct?

A I don't recall the dates.

Q I didn't ask you the date. I asked you whether Mr. Ezrine had introduced you to Mr. Greenberg prior to the Manor Nursing Centers underwriting.

THE COURT: Closing.

A I would say yes.

Q I don't want to force you to say anything, Mr. Werner. Is it yes or is it no?

A It is yes.

Q And had you met Harold Greenberg, who was your attorney, at the Manor Nursing --

THE COURT: Don't say, "Who was your attorney", but had you met Mr. Harold Greenberg.

He said that at some time he became his attorney.

When did he become your attorney ?

THE WITNESS: When Manor Nursing System became effective.

THE COURT: Which was when?

THE WITNESS: Which was December 9.

THE COURT: From December 9 on until when did Greenberg act as your attorney?

THE WITNESS: Until February 20.

THE COURT: Just for that period?

THE WITNESS: That is correct.

MR. SEIDMAN: I believe the witness testified that Mr. Greenberg had represented him at a prior occasion.

THE WITNESS: Not Mr. Greenberg, Mr. Glass.

Q Of Mr. Greenberg's office, of Glass & Greenberg?

A I don't know if they were partners at that time.

Q Fine, you may be right.

Do you recall whether, if they weren't partners, they shared the same office?

A I don't recall.

Q Did Mr. Ivan Ezrine recommend that you, Benjamin Werner & Company, use Harold Greenberg as the underwriter's attorney with respect to the Manor Nursing Centers' deal?

A I had no choice.

Q Tell me --

A He just said, "Harold Greenberg is your attorney," and I accepted it.

THE COURT: All right.

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Q Therefore, Mr. Ezrine told you who your attorney was; is that right?

A That is correct.

Q You didn't protest?

A I never protested in any transaction that I had with Ivan Ezrine. I went along with him.

Q You trusted him implicitly?

A Exactly.

Q You trusted him implicitly because you believed he was an expert in SEC law?

A And he was my friend and attorney, besides that.

THE COURT: I think we will recess for lunch now.

[Trial recessed until two p.m.]